Supreme Court, U.S.
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No. 06-100

IN THE
Supreme Court of the United States

GEICO GENERAL INSURANCE COMPANY, GEICO INDEMNITY COMPANY, and GOVERNMENT EMPLOYEES INSURANCE COMPANY,
Petitioners,

v.

AJENE EDO,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 19, 2006
CERTIORARI GRANTED SEPTEMBER 26, 2006

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JOINT APPENDIX

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Affidavit of Paul Lavrey, Corporate Representative, in Support of Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment (Exhibit B to Affidavit of Meloney Cargil Perry in Support of Defendants' Renewed Motion for Summary Judgment) (Oct. 1, 2003) (ER-051-057) JA-18

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Plaintiff's Response to Defendants' Concise Statement

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[1] "ER" refers to the Excerpts of Record

[2] "DE" refers to the docket entry numbering used in the United States District Court for the District of Oregon.

of Material Facts in Support of Defendants' Renewed Motion for Summary Judgment (Oct. 31, 2003) (ER-087-095) JA-30

Certain exhibits to Affidavit of Mark A. Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment (Oct. 31, 2003):

Exhibit 1, Deposition of Paul Lavrey (March 17, 2003) (excerpts) (ER-101-105, 120-122, 127-137, 142, 148-149) JA-38

Exhibit 3, Letter from GEICO Companies to Oregon Department of Consumer and Business Services with Credit Scoring Procedure attached (Aug. 3, 1999) (excerpts) (ER-157-158, 162-166) JA-52

Exhibit 5, Affidavit of Paul Lavrey (March 13, 2003) (excerpts) (ER-201-206) JA-63

Exhibit 6, 2002 Credit Report Underwriting Questionnaire (excerpts) (ER-208-210, 211, 218-219) JA-69

Exhibit 7, Defendants' Supplemental Response to Plaintiffs' Interrogatory No. 6 (April 28, 2003) (ER-220-221) JA-80

Concise Statement of Material Facts in Support of Defendants' Reply to Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment (Nov. 21, 2003) (ER-0230-240) JA-82

RELEVANT DOCKET ENTRIES
U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 04-35279

7/27/04	Filed UNDER SEAL original and 15 copies Appellant Ajene Edo's opening brief (Informal: n) 48 pages and five excerpts of record in 1 vol.; served on 7/23/04 (BRIEFS & EXCERPTS FILED UNDER SEAL) [04-35279] (hh) [04-35279]
	* * *
9/17/04	Filed UNDER SEAL original and 15 copies appellees Geico General Insurance Co., et al., 59 pages brief, and 5 supp'l excerpts in 1 vol. (BRIEFS AND SUPP'L EXCERPTS FILED UNDER SEAL); served on 9/13/04 [04-35279] (hh) [04-35279]
	* * *
10/18/04	Filed UNDER SEAL original and 15 copies Ajene Edo's reply brief, (Informal: n) 24 pages; served on 10/14/04 [04-35279] (hh) [04-35279]
	* * *
3/8/05	ARGUED AND SUBMITTED TO Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE [03-35695, 03-35848, 04-35279, 04-35313] (dr) [03-35695 03-35848 04-35279 04-35313]
	* * *

8/4/05	FILED OPINION: REVERSED REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Stephen R. REINHARDT, author; Marsha S. BERZON; Jay S. BYBEE, dissenting partially.) FILED AND ENTERED JUDGMENT. [03-35695, 04-35279] (gar) [03-35695 04-35279]

* * *

9/1/05	[5549974] Filed original and 50 copies Appellees Geico General Ins., et al., petition for panel rehearing and rehearing en banc, 18 p.pages, served on 8/31/05 (PANEL, ALL ACTIVE JUDGES AND INTERESTED SENIOR JUDGES) [04-35279] (hh) [04-35279]

* * *

10/3/05	OPINION FILED (Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE,): REVERSED REMANDED. Order: the opinion and dissent filed on 8/4/05 CITE, is withdrawn. It may not be cites as precedent by or to this ct or any dc in the 9th Cir. The clerk shall file the attached opinion and dissent in its place. [03-35695, 04-35279] (gar) [03-35695 04-35279]

* * *

10/24/05	Filed order and amended opinion (Judges Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE) The majority opn filed 10/3/05, slip op. 13753, is hereby amended as follows: At slip op 13770, footnote 7, replace "The related cases are resolved by memoranda of disposition filed concurrently herewith," with "The related cases are resolved by memorandum dispositions filed separately." [03-35695, 04-35279] (crw) [03-35695 04-35279]
10/31/05	[5614832] Filed original and 50 copies Appellees Geico General Ins., et al., amended petition for rehearing en banc, 19 p.pages, served on 10/28/05 (PANEL, ALL ACTIVE JUDGES AND INTERESTED SENIOR JUDGES) [04-35279] (hh)[04-35279]
	* * *
1/25/06	OPINION FILED (Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE): REVERSED REMANDED. Order: The opinion and dissent filed on 10/3/05, amended on 10/24/05 is withdrawn. It may not be cited as precedent by or to this court of any dc of the 9th Circuit. The clerk shall file the attached opinion in its place. [03-35695, 04-35279] (gar) [03-35695 04-35279]
	* * *
2/15/06	[5724774] Filed original and 50 copies Appellees Geico General Ins., et al., second amended petition for rehearing en banc; 18 p.pages, served on 2/14/06 (PANEL, ALL ACTIVE JUDGES AND INTERESTED SENIOR JUDGES) [04-35279] (hh)[04-35279]

* * *

3/29/06 Filed Appellant Ajene Edo's response to appellees' second amended petition for rehearing en banc [5724774-1], 15 pages; served on 3/28/06 (PANEL, ALL ACTIVE JUDGES AND INTERESTED SENIOR JUDGES) [04-35279] (hh) [04-35279]

* * *

4/20/06 Filed order (Stephen R. REINHARDT, Marsha S. BERZON, Jay S. BYBEE): denying petitions for panel rehearing and petitions for enbanc rehearing [5725174-1] [5724774-1] The mandate shall issue forthwith. [03-35695, 04-35279] (gar) [03-35695 04-35279]

4/20/06 MANDATE ISSUED with costs taxed against aple in the amount of $395.10 [03-35695, 04-35279] (gar) [03-35695 04-35279]

7/24/06 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 06-82 filed on 7/19/06. [03-35695, 04-35279] (gar) [03-35695 04-35279]

10/3/06 Received notice from Supreme Court, petition for certiorari GRANTED on 9/26/06. Supreme Court No. 06-100 PANEL (gar) [03-35695 04-35279]

RELEVANT DOCKET ENTRIES
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

NO. CV 3-02-00678 BR

7/22/02	14	Stipulated Protective Order: Signed 7/19/02 by Judge Anna J. Brown. (ljl,) (Entered: 07/23/2002)
		* * *
5/15/03	68	Third Amended Complaint for Violation of Fair Credit Reporting Act. Filed by Ajene Edo against Geico Casualty Company, Geico General Insurance Company, Geico Indemnity Company, Government Employees Insurance Company. (ljl,) (Entered: 05/16/2003)
5/23/03	69	Answer to Third Amended Complaint for Violation of Fair Credit Reporting Act. Filed by all defendants. (Related document(s) 68) (ljl,) (Entered: 05/27/2003)
		* * *
10/3/03	105	Renewed Motion for Summary Judgment Oral Argument Requested. FILED UNDER SEAL. Filed by all defendants. (ljl,) (Entered: 10/07/2003)
10/3/03	106	Concise Statement of Material Fact FILED UNDER SEAL. Filed by all defendants. (ljl,) (Entered: 10/07/2003)

10/3/03	107	Memorandum in Support of Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by all defendants. (Related document(s)105) (ljl,) (Entered: 10/07/2003)
10/3/03	108	Affidavit of Meloney Cargil Perry in Support of Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by all defendants. (Related document(s)105) (ljl,) (Entered: 10/07/2003)

* * *

10/31/03	111	Response to Defendants' Concise Statement of Material Facts in Support of Defendants' Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by Ajene Edo. (Related document(s)106) (ljl,) (Entered: 11/03/2003)
10/31/03	112	Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by Ajene Edo. (Related motion(s)105) (ljl,) (Entered: 11/03/2003)
10/31/03	113	Affidavit of Mark A. Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by Ajene Edo. (Related document(s)112) (ljl,) (Entered: 11/03/2003)

* * *

11/21/03	118	Concise Statement of Material Fact in Support of Defendants' Reply to Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by all defendants. (ljl,) (Entered: 11/25/2003)
11/21/03	119	Memorandum in Support of Defendants' Reply to Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment. FILED UNDER SEAL. Request for Oral Argument. Filed by all defendants. (Related document(s)87) (ljl,) (Entered: 11/25/2003)
11/21/03	120	Affidavit of Meloney Cargil Perry in Support of Defendants' Reply to Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment. FILED UNDER SEAL. Filed by all defendants. (Related document(s)87) (ljl,) (Entered: 11/25/2003)
		* * *
2/24/04	128	ORDER: Opinion and Order: For the reasons indicated, the Court GRANTS Defendants' Renewed Motion for Summary Judgment (#105), GRANTS Defendants' Renewed Motion to Strike Expert Declaration of Birny Birnbaum (#121), and DISMISSES this action with prejudice. See 12 page Opinion. Signed on 2/23/2004 by Judge Anna J. Brown. (sm,) (Entered: 02/24/2004)

2/24/04	129	Judgment: Case dismissed with prejudice. Signed 2/23/2004 by Judge Anna J. Brown. (sm,) (Entered: 02/24/2004)
3/18/04	130	Notice of Appeal (with attached Representation Statement and Statement of Related Cases) To USCA - 9th Circuit from judgment entered 2/24/04. Filing fee in amount of $255 collected; Receipt No. 175323 issued. (Related Document(s): Judgment 129) (tomg,) (Entered: 03/23/2004)

[filed 5-16-03]

[Clerk's Stamp Illegible]

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PLAINTIFF'S THIRD AMENDED COMPLAINT FOR VIOLATION OF FAIR CREDIT REPORTING ACT

SUMMARY AND OVERVIEW

1. This is a class action on behalf of all "new business" purchasers of automobile insurance policies from GEICO Casualty Company ("GEICO Casualty"), GEICO General Insurance Company ("GEICO General"), GEICO Indemnity Company ("GEICO Indemnity"), and Government Employees Insurance Company ("Government Employees") — from May 24, 2000 to date (the "Class Period").

2. Defendant GEICO Casualty is an affiliate of GEICO General, GEICO Indemnity and Government Employees, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

3. Defendant GEICO General is an affiliate of GEICO Casualty, GEICO Indemnity and Government Employees, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

4. Defendant GEICO Indemnity is an affiliate of GEICO Casualty, GEICO General and Government Employees, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

5. Defendant Government Employees is an affiliate of GEICO Casualty, GEICO General and GEICO Indemnity, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

6. Since at least December 1998, defendants have used information contained in consumer reports when underwriting or rating policies for automobile insurance. Defendants have taken adverse actions with respect to

plaintiff and those similarly situated based on this information, but have failed to provide the notification of the adverse action as required by the Fair Credit Reporting Act, 15 U.S.C. §1681.

JURISDICTION AND VENUE

7. Jurisdiction is conferred by 15 U.S.C. §1681. The claims asserted herein arise under 15 U.S.C. §1681.

8. Venue is proper in this District pursuant to 15 U.S.C. §1681. Defendants do business in this District and many of the insurance policies involved in this case were issued in this District.

BACKGROUND TO THE CLASS PERIOD

9. On or before December 1998, defendants began using consumer report information to underwrite or rate automobile insurance policies.

FIRST CLAIM FOR RELIEF

For Violation of 15 U.S.C. §1681

10. Plaintiff incorporates paragraphs 1 through 9 by reference.

11. Plaintiff Ajene Edo and all others similarly situated, purchased automobile insurance policies from defendants during the Class Period. Defendants took an adverse action with respect to underwriting or rating the policies of plaintiff, and all other similarly situated, based on information contained in a consumer report.

12. 15 U.S.C. §1681(m) requires users of consumer reports to provide oral, written or electronic notice of any adverse action taken with respect to any consumer that is based in whole or in part on information obtained in a consumer report.

13. Defendants willfully failed to notify plaintiff, and all others similarly situated, of the adverse action.

14. 15 U.S.C. §1681(n) provides that any person who willfully fails to comply with any requirement imposed under §1681(n) is liable to the consumer for damages of not

less than $100 and not more than $1,000. Accordingly, plaintiff, and all those similarly situated, are entitled to recover statutory damages.

15. Plaintiff, and all those similarly situated, are also entitled under 15 U.S.C. §1681(n) to recover such amount of punitive damages as the court may allow.

16. 15 U.S.C. §1681(n) provides that the cost of the action together with reasonable attorney fees as determined by the court are also recoverable by the plaintiff, and all others similarly situated.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased "new business" automobile insurance policies from defendants from May 24, 2000 to date.

18. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, defendants issued hundreds of "new business" policies. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

19. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

i. Whether the underwriting or rating practices of defendants constitute adverse actions under the Fair Credit Reporting Act;

ii. Whether 15 U.S.C. §1681 was violated by defendants;

20. Plaintiff's claim is typical of those of the Class because plaintiff and the Class failed to receive notification of the alleged adverse actions as required by the Fair Credit Reporting Act.

21. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action litigation. Plaintiff has no interests which conflict with those of the Class.

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

(1) Declaring this action to be a proper class action pursuant to Rule 23;

(2) Awarding plaintiff and the members of the Class statutory damages, punitive damages, attorney fees and costs; and

(3) Awarding such other legal and equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED this 14th day of May, 2003.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By /s/ Steve Larson
N. ROBERT STOLL, OSB No. 69165
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Attorneys for Plaintiff

[Filed 5-23-03]

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DEFENDANTS' ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT FOR VIOLATION OF FAIR CREDIT REPORTING ACT

For their ANSWER to Plaintiff's Third Amended Complaint for Violation of Fair Credit Reporting Act (the "Third Amended Complaint"), Defendants GEICO Casualty Company ("GEICO Casualty"), GEICO General Insurance Company ("GEICO General"), GEICO Indemnity Company ("GEICO Indemnity"), and Government Employees Insurance Company ("Government Employees") (collectively, "GEICO" or "Defendants"), admit, deny, and allege as follows:

FIRST DEFENSE

(Admissions and Denials)

1. GEICO denies each and every allegation contained in paragraph 1 of the Third Amended Complaint.

2. GEICO admits that GEICO Casualty is an affiliate of GEICO General, GEICO Indemnity and Government Employees, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

3. GEICO admits that GEICO General is an affiliate of GEICO Casualty, GEICO Indemnity and Government Employees, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

4. GEICO admits that GEICO Indemnity is an affiliate of GEICO Casualty, GEICO General and Government Employees, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

5. GEICO admits that Government Employees is an affiliate of GEICO Casualty, GEICO General and GEICO

Indemnity, and is licensed to do business in Oregon and sells automobile insurance in Oregon.

6. GEICO admits that it has, from time to time, used information contained in consumer reports when underwriting or rating policies for automobile insurance. Otherwise, GEICO denies the remainder of the allegations contained in paragraph 6 of the Third Amended Complaint.

7. GEICO denies each and every allegation contained in paragraph 7 of the Third Amended Complaint.

8. GEICO admits that it does business in the State of Oregon. Otherwise, GEICO denies the remainder of the allegations contained in paragraph 8 of the Third Amended Complaint.

9. GEICO admits that it has used consumer report information from time to time to underwrite or rate automobile insurance policies. Otherwise, GEICO denies the remainder of the allegations contained in paragraph 9 of the Third Amended Complaint.

10. Paragraph 10 of the Third Amended Complaint contains no allegations to be admitted or denied. To the extent an answer is required, GEICO incorporates by reference its responses to the incorporated paragraphs as though set forth in full.

11. GEICO admits that Ajene Edo purchased an automobile insurance policy from GEICO Indemnity on or about December 27, 2000. Otherwise, GEICO denies the remainder of the allegations contained in paragraph 11 of the Third Amended Complaint.

12. The provisions of 15 U.S.C. §1681(m) speak for themselves. GEICO denies the remainder of the allegations contained in paragraph 12 of the Third Amended Complaint.

13. GEICO denies each and every allegation contained in paragraph 13 of the Third Amended Complaint.

14. The provisions of 15 U.S.C. §1681(n) speak for themselves. GEICO denies the remainder of the allegations contained in paragraph 14 of the Third Amended Complaint.

15. GEICO denies all of the allegations contained in paragraph 15 of the Third Amended Complaint.

16. The provisions of 15 U.S.C. §1681(n) speak for themselves. GEICO denies the remainder of the allegations contained in paragraph 16 of the Third Amended Complaint.

17. GEICO admits that Plaintiff is attempting to bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, but GEICO denies all other allegations contained in paragraph 17 of the Third Amended Complaint.

18. GEICO denies each and every allegation contained in paragraph 18 of the Third Amended Complaint.

19. GEICO denies each and every allegation contained in paragraph 19 of the Third Amended Complaint.

20. GEICO denies each and every allegation contained in paragraph 20 of the Third Amended Complaint.

21. GEICO denies each and every allegation contained in paragraph 21 of the Third Amended Complaint.

22. GEICO denies each and every allegation contained in paragraph 22 of the Third Amended Complaint.

AFFIRMATIVE DEFENSES

WHEREFORE, having fully answered the allegations of the Third Amended Complaint, GEICO asserts the following affirmative defenses:

SECOND DEFENSE

(Failure to State a Claim)

23. Plaintiff's Third Amended Complaint fails to state a claim under F.R.C.P. 12(b)(6).

THIRD DEFENSE

(Notification)

24. All adverse action notifications which were required to be provided by law were provided by Defendants.

FOURTH DEFENSE

(Reasonable Procedures)

25. Reasonable procedures were maintained by Defendants, in accordance with 15 U.S.C. §1681(m), to assure compliance with the provisions of the Fair Credit Reporting Act.

FIFTH DEFENSE

(Standing and Subject Matter Jurisdiction)

26. Plaintiff obtained an insurance policy from Defendant GEICO Indemnity. Plaintiff lacks standing to bring claims based upon any practices of, or policies issued by, any Defendant other than GEICO Indemnity. Therefore, this Court lacks subject matter jurisdiction over the other three Defendants – GEICO Casualty, GEICO General and Government Employees.

SIXTH DEFENSE

(Waiver, Estoppel)

27. Plaintiff's claims are, in whole or in part, barred by the respective doctrines of waiver and/or estoppel.

SEVENTH DEFENSE

(Non-Willful Conduct)

28. Any violation of the Fair Credit Reporting Act by Defendants, which is denied, was neither intentional nor willful.

EIGHTH DEFENSE

(Statute of Limitations)

29. The applicable statute of limitations bars Plaintiff's claims.

NINTH DEFENSE

(No Personal Jurisdiction)

30. This Court lacks personal jurisdiction over Defendants.

TENTH DEFENSE

(Improper Venue)

31. Venue in the District of Oregon is improper.

ELEVENTH DEFENSE

(No Damages)

32. Plaintiff's claims for statutory and punitive damages under 15 U.S.C. §1681(n) are barred as a matter of law.

WHEREFORE, Defendants request judgment as follows:

A. That Plaintiff's Third Amended Complaint be dismissed with prejudice and that Plaintiff take nothing thereby;

B. That this Court enter judgment for Defendants and against Plaintiff;

C. For costs and disbursements incurred in this action; and

D. For such other and further relief, either at law or in equity, to which Defendants may show themselves to be justly entitled.

DATED this 23rd day of May 2003.

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[Case caption and document footer omitted in printing]
Exhibit B to Affidavit of Meloney Cargil Perry in Support of Defendants' Renewed Motion for Summary Judgment

AFFIDAVIT OF PAUL LAVREY, CORPORATE REPRESENTATIVE, IN SUPPORT OF DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

STATE OF MARYLAND §
§
COUNTY OF MONTGOMERY §

BEFORE ME, the undersigned authority, on this day personally appeared Paul Lavrey, the corporate representative of Defendants, who after being by me first duly sworn, upon his oath deposed and stated as follows:

1. "My name is Paul Lavrey. I am over 18 years of age, and am employed by Government Employees Insurance Company. My business address is Government Employees Insurance Company, 5260 Western Avenue, Chevy Chase, Maryland, 20815. I have never been convicted of a felony or crime involving moral turpitude, and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

2. I have been an employee of Government Employees Insurance Company for approximately 20 years. I have been the Director of Underwriting Research for Defendants GEICO Casualty Company ("GEICO Casualty"), GEICO General Insurance Company ("GEICO General"), GEICO Indemnity Company ("GEICO Indemnity") and Government Employees Insurance Company ("Government Employees") (collectively, "GEICO") for approximately 3 years. In my capacity as

Director of Underwriting Research of GEICO, I have become familiar with the operations and programs of GEICO. I have also become familiar with the underwriting and business policies of GEICO. I am authorized to make this Affidavit on behalf of GEICO.

3. GEICO used reasonable procedures in complying with the Fair Credit Reporting Act. In 1999, GEICO began using insurance scores in Oregon, with the aid of a credit scoring model developed by Fair Isaac Corporation, as one of the characteristics in determining company and/or tier placement. Initially, GEICO sent adverse action notices to any applicant that did not receive a policy with the preferred companies – Government Employees and/or GEICO General.

4. In 1999, GEICO began using its Computer-Assisted Underwriting ("CAU") system to determine specifically whether an applicant was adversely impacted by the use of the insurance score. The CAU system compared the company and tier placement that the applicant received, with the company and tier placement that would have been received if GEICO had not ordered an insurance score for the applicant. If the use of the actual insurance score resulted in placement in a company or tier with higher rates than the company or tier that would have resulted if the insurance score had not been ordered, an FCRA notice was automatically sent. The intent of the system change in 1999 was to identify the specific persons that were supposed to receive the adverse action notices.

5. In December 2002, GEICO made a change in determining how it defines who would receive an adverse action notice. GEICO began comparing an applicant's placement when using their actual insurance score with what their placement would have been when using the theoretically highest possible insurance score. If such comparison shows that the applicant would have been eligible for placement in a company or tier with lower rates, then GEICO sends an adverse action notice.

6. As a result of legislation passed in Washington State requiring this new process described in Paragraph 5 above, GEICO made the change in December 2002 for Washington State, and in other credit states as well.

7. When an applicant calls GEICO's 1-800 number to request a rate quote, the sales counselor completes the "applicant page" and collects the applicant's date of birth on the "driver page", and then the CAU system begins its process to order an insurance score. The insurance score is retrieved by the CAU system from Trans Union and the insurance score is combined with the other underwriting factors to determine company and tier placement. GEICO requests the insurance score in order to help determine the company and Tier placement within the four GEICO entities. The jury window will show the recommended company and tier (if applicable), but the sales counselor does not see the actual insurance score.

8. The CAU model is the model that all four of the GEICO companies use to place risks. The CAU system determines if the applicant meets the eligibility requirements for placement in Government Employees or GEICO General, which are both preferred risk companies. If the applicant does not meet these eligibility requirements, then the CAU system determines if the applicant meets the eligibility requirements for insurance with either GEICO Indemnity or GEICO Casualty, which are standard and non-standard insurance carriers, respectively. Once the CAU system determines company and tier placement (if applicable), the applicant is rated with the recommended company and is offered a rate quote with that particular company. The applicant then accepts or rejects the rate quote. If the applicant accepts the rate quote, then at the completion of the underwriting process, the company that offered the rate quote issues the policy contract to the insured, and charges a premium to the insured.

9. The procedure detailed above in Paragraphs 7 and 8 was followed with Plaintiff Ajene Edo ("Edo"). Edo

requested a rate quote from GEICO on or about December 26, 2000. A GEICO sales counselor processed Edo's application. The CAU system than requested an insurance score from Trans Union. Then the CAU system recommended placement in GEICO Indemnity. The rating system then rated Edo for GEICO Indemnity. Next, the sales counselor offered the rate quote to Edo for a policy with GEICO Indemnity. Edo accepted the rate quote with GEICO Indemnity. Upon completion of the underwriting process, GEICO Indemnity issued Edo a policy contract and charged him a premium. Edo's insurance coverage binder began on 12/26/2000 in the State of Oregon.

10. In order to determine whether Edo should receive an adverse action notice, the CAU system compared Edo's company and tier placement when using his actual insurance score, with the placement that would have resulted if his insurance score had not been used.

11. Edo would have received the same company and tier placement whether or not his insurance score was utilized.

12. For Edo, if you take the Total Weight including credit of 393, subtract out his Actual Credit Weight of 62, add back the Neutral Credit Weight of 56, you get the Total Weight with Neutral Credit of 387. Edo's actual company and tier placement was with GEICO Indemnity. Edo's hypothetical placement with Neutral Credit Weight was still GEICO Indemnity. The Neutral Weight is a mathematical formula developed by Fair Isaac Corporation.

13. All four companies, Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company, each issue, deny, and renew insurance policies. In addition, all four companies, Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company, each collect premiums and pay claims on their respective policies.

14. In general, the premium rates for a policy with GEICO Casualty are higher than the premium rates for a policy with GEICO Indemnity.

15. GEICO Casualty Company did not deny or cancel Plaintiff Edo's insurance policy, nor did GEICO Casualty Company increase the amount Edo was charged for insurance based on the use of an insurance score. GEICO Casualty Company did not reduce or adversely or unfavorably change the terms of coverage or amount on any insurance policy with Edo based on the use of an insurance score.

16. GEICO General Insurance Company did not deny or cancel Plaintiff Edo's insurance policy, nor did GEICO General Insurance Company increase the amount Edo was charged for insurance based on the use of an insurance score. GEICO General Insurance Company did not reduce or adversely or unfavorably change the terms of coverage or amount on any insurance policy with Edo based on the use of an insurance score.

17. Government Employees Insurance Company did not deny or cancel Plaintiff Edo's insurance policy, nor did Government Employees Insurance Company increase the amount Edo was charged for insurance based on the use of an insurance score. Government Employees insurance Company did not reduce or adversely or unfavorably change the terms of coverage or amount on any insurance policy with Edo based on the use of an insurance score.

18. Only those applicants that are federal, state, county or municipal government employees or military personnel are eligible for insurance with Government Employees.

19. GEICO has consulted, and will continue to consult, with legal counsel regarding the requirements of the FCRA, potential state and federal changes and decisions regarding the FCRA, and compliance therewith.

FURTHER AFFIANT SAYETH NOT.

/s/ Paul Lavrey
Paul Lavrey

SUBSCRIBED AND SWORN TO BEFORE ME on this 1st day of October 2003, to certify which witness my hand and seal of office.

/s/ Betty Lee
Notary Public in and for the State of Maryland

/s/ Betty Lee
Typed/Printed Name of Notary

My Commission Expires:

3-1-2004

[seal]

[filed 10-03-03]

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CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT

Pursuant to LR 56.1, Defendants GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company (collectively, "GEICO" or "Defendants"), submit the following Concise Statement of Material Facts in Support of Defendants' Renewed Motion for Summary Judgment:

1. Plaintiff Ajene Edo ("Edo") is the sole remaining Plaintiff in this action. *See* Stipulated Notice of Dismissal of Christina Sams, Matt Blevins and Ami Abarbanel, on file with this Court; and Plaintiff's Third Amended Complaint for Violation of Fair Credit Reporting Act (the "Complaint") at ¶11, on file with this Court.

2. Edo was issued Policy No. ZH-29-08 underwritten by GEICO Indemnity Company ("GEICO Indemnity"), effective December 27, 2000. *See* Affidavit of Paul Lavrey, Corporate Representative, in Support of Motion for Summary Judgment ("Lavrey Aff. (1st)") at ¶3, and Exhibit "A" thereto (all of which are included as Exhibit "A" to the Affidavit of Meloney Cargil Perry in Support of Renewed Motion for Summary Judgment (the "Perry Aff.")).

3. None of the other Defendants (GEICO Casualty Company, GEICO General Insurance Company or Government Employees Insurance Company) in this action ever issued or underwrote any policy of insurance to Edo. *See* Lavrey Aff. (1st) at ¶4.

4. Edo has alleged only one cause of action against Defendants; specifically, Edo alleges that Defendants "took an adverse action with respect to underwriting or rating the

policies of plaintiff, and all other similarly situated, based on information contained in a consumer report ... [and] willfully failed to notify plaintiff and others similarly situated, of the adverse action" and that this constitutes a violation of 15 U.S.C. §1681(m) and (n). *See* Complaint at ¶¶11 and 13, on file with this Court.

5. Edo is not seeking any actual damages; Edo is only seeking statutory damages. *See* Plaintiff's Supplemental Response to Defendants' First Set of Interrogatories, Answer to Interrogatory No. 6, attached as Exhibit "J" to the Perry Aff.

6. Edo's personal claim, as well as his claims on behalf of the purported class, relate only to "new business" policies underwritten by GEICO. *See* Complaint at ¶1, on file with this Court.

7. GEICO has, at all times, used its best efforts to comply with the Fair Credit Reporting Act ("FCRA"), *See* Lavrey Aff. (1st) at ¶5.

8. At the time Edo applied for insurance with GEICO, his insurance score was a factor in determining which of the defendants he qualified for a rate quote and coverage with, and in which rating tier he would be placed in with that particular Defendant. *See* Lavrey Aff. (1st) at ¶6; *see also* Lavrey Aff. (3rd) at ¶14.

9. Whenever GEICO obtained an insurance score on an individual requesting an insurance quotation, its procedure was to compare the company and tier placement that would result when using the insurance score as an underwriting factor, with the company and tier placement that would result if credit was not used. If the comparison showed that the use of credit had an adverse impact on an individual's company or tier placement, an adverse action letter would be sent to the individual in accordance with the Fair Credit Reporting Act. This procedure was followed with Plaintiff Edo. His insurance score had no impact on either his company or tier placement, i.e., his premium would have been identical even if his insurance score had

not been used in underwriting, so an adverse action letter was not sent to him. *See* Lavrey Aff. (1st) at ¶7.

10. Since Edo received the same company and tier placement he would have received if credit was not used, no "adverse action" notice was sent, as no "adverse action" was taken against Edo. *See* Lavrey Aff. (1st) at ¶8.

11. GEICO Indemnity did not deny or cancel Edo's insurance policy. *See* Lavrey Aff. (1st) at ¶9. GEICO Indemnity did not increase the amount Edo was charged for insurance based on the use of an insurance score. *See* Lavrey Aff. (1st) at ¶10. GEICO Indemnity did not reduce, or adversely or unfavorably change, the terms of coverage or amount of Edo's policy based on the use of an insurance score. *See* Lavrey Aff. (1st) at ¶11.

12. The GEICO entity to which Edo "applied" for insurance was GEICO Indemnity. *See* Affidavit of Paul Lavrey, Corporate Representative, In Support of Defendants' Renewed Motion for Summary Judgment ("Lavrey Aff. 3rd)") at ¶5, and Exhibit "A" thereto, which is included as Exhibit "C" to the Perry Aff.

13. In Oregon, when a customer calls GEICO's "1-800" telephone number to request a rate quote, the telephone sales counselor gathers basic information about the caller in the computer. Then, the computer system orders an insurance score if the caller has not refused the obtaining of credit information. The insurance score is obtained from Trans Union; then the insurance score is combined by the Computer Assisted Underwriting ("CAU") system with the other underwriting factors to determine company and tier placement within one of the four GEICO entities. A window will then appear on the telephone sales counselor's computer screen showing the recommended company and tier, but the telephone sales counselor does not see the actual insurance score. *See* Lavrey Aff. (3rd) at ¶3.

14. Before a rate quote can be offered, the CAU system must determine the company, if any, with which the potential customer is eligible to obtain a rate quote. It is

possible that a potential customer will not be eligible for a rate quote with any GEICO company. Once the CAU system determines the company with which the customer is eligible and tier placement, the customer is rated with the recommended company and is offered a rate quote with that particular company, subject to the conditions that the Motor Vehicle Report ("MVR") and Comprehensive Loss Underwriting Exchange ("CLUE") reports to be ordered, and the application to be completed, are materially consistent with the information provided by the potential customer. The potential customer then accepts or rejects the rate quote. If the potential customer accepts the rate quote, the company that offered the rate quote then obtains the MVR and CLUE reports, issues the policy contract to the customer, and charges a premium to the customer. The customer completes and signs the application after accepting the rate quote from the particular company. *See* Lavrey Aff. (3rd) at ¶4.

15. The procedure detailed in Paragraphs 13 and 14 was followed with Edo. Edo requested a rate quote from GEICO on or about December 26, 2000. A GEICO telephone sales counselor processed Edo's rate quote. The computer system then requested an insurance score from Trans Union. Then the CAU system recommended placement in GEICO Indemnity. The rating system then rated Edo for GEICO Indemnity. Next, the telephone sales counselor offered the rate quote to Edo for a policy with GEICO Indemnity. Edo accepted the rate quote with GEICO Indemnity, subject to the conditions that his MVR and CLUE reports and his application would not be materially different from the information used to generate the rate quote. After obtaining his MVR and CLUE reports, GEICO Indemnity issued Edo a policy contract and charged him a premium. Edo's insurance coverage binder began on 12/26/2000 in the State of Oregon. Edo completed and signed an application on January 19, 2001 and mailed it back to GEICO. *See* Lavrey Aff. (3rd) at ¶5.

16. GEICO used reasonable procedures in complying with the Fair Credit Reporting Act. *See* Affidavit of Paul Lavrey, Corporate Representative, in Support of Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment (hereinafter, "Lavrey Aff. (2nd)") at ¶¶3-6, 12, and 15-17, which is included as Exhibit "B" to the Perry Aff.

17. Only those applicants that are federal, state, county or municipal government employees or military personnel are eligible for insurance with Government Employees. *See* Lavrey Aff. (2nd) at 18. At the time of his rate quote and application with GEICO Indemnity, Edo was not a member of the military or a government employee. *See* Deposition of Ajene Edo Dated January 28, 2003 at deposition pages 4-10.

18. GEICO has consulted, and will continue to consult, with legal counsel regarding the requirements of the FCRA, potential state and federal changes and decisions regarding the FCRA, and compliance therewith. *See* Lavrey Aff. (2nd) at ¶19.

19. In general, the premium rates for a policy with GEICO Casualty are higher than the premium rates for a policy with GEICO Indemnity. *See* Lavrey Aff. (2nd) at ¶14.

20. Neither GEICO Casualty Company, GEICO General Insurance Company, nor Government Employees Insurance Company denied or cancelled Edo's insurance policy, nor did any of them increase the amount Edo was charged for insurance based on the use of an insurance score. None of these companies reduced or adversely or unfavorably changed the terms of coverage or amount of any insurance policy with Edo based on the use of an insurance score. *See* Lavrey Aff. (2nd) at ¶¶15, 16, 17 and 18.

DATED this 3rd day of October 2003.

/s/ Meloney Cargil Perry
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[filed 10-31-03]

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PLAINTIFF'S RESPONSE TO DEFENDANTS' CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT

FILED UNDER SEAL, PURSUANT TO STIPULATED PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 56 and LR 56.1(b), plaintiff Ajene Edo ("Edo") files this response to Defendants' Concise Statement of Material Facts in Support of Defendants' Renewed Motion for Summary Judgment ("DCSF").

1. For purposes of this motion only, plaintiff admits the assertions of fact in DCSF ¶¶ 1, 2, 4, 6, 8, 13-15, 17, and 19.

2. For purposes of this motion only, plaintiff admits the assertions of fact in DCSF ¶ 3, except to the extent that defendants assert they can be liable under FCRA *only* if they "issued or underwrote any policy of insurance to Edo." Any such assertion is a legal conclusion that is contradicted by the clear language of 15 U.S.C. § 1681a(k)(1)(B)(i), the FTC's interpretation of the Fair Credit Reporting Act ("FCRA"), and FCRA's legislative history.

3. For purposes of this motion only, plaintiff admits the assertion in DSCF [sic] ¶ 5 that Edo is not seeking any actual damages. Plaintiff denies the remaining assertion in DCSF ¶ 5 since plaintiff's Third Amended Complaint is clear that, in addition to statutory damages, plaintiff is also seeking punitive damages, attorney fees and costs, and such other relief as the court deems just and equitable. See Third Amended Complaint at ¶¶ 14-15, and Page 5.

4. For the reasons set forth below, plaintiff denies the assertions in DCSF ¶ 7.

5. With respect to the assertions in DCSF ¶ 9, and for the purposes of this motion only, plaintiff admits that, at the time he applied for insurance with defendants, defendants' procedure was to compare the company and tier placement that would result when using the insurance score as an underwriting factor, with the company and tier placement that would result if credit were not used. For purposes of this motion only, plaintiff also admits that the premium offered to Edo would have been same [sic] had defendants not considered his credit information. For the reasons set forth below, plaintiff denies the remaining assertions in DCSF ¶ 9.

6. For the reasons set forth below, plaintiff denies the assertions in DCSF ¶ 10. Plaintiff further denies these assertions because they are legal conclusions that are contradicted by the clear language of FCRA, the FTC's interpretations, case law, and FCRA's legislative history.

7. For purposes of this motion only, plaintiff admits the assertions of fact contained in the first sentence of DCSF ¶ 11. For the reasons set forth below, plaintiff denies the remaining assertions in DCSF ¶ 11. Plaintiff further denies these assertions because they are legal conclusions that are contradicted by the clear language of FCRA, the FTC's interpretations, case law, and FCRA's legislative history.

8. For the reasons set forth below, plaintiff denies the assertions in DCSF ¶ 12. Plaintiff further denies these assertions because they are legal conclusions that are contradicted by the clear language of FCRA, the FTC's interpretations, case law, and FCRA's legislative history.

9. For the reasons set forth below, plaintiff denies the assertions in DCSF ¶ 16.

10. With respect to the assertions in DCSF ¶ 18, for the purposes of this motion only plaintiff admits that defendants have, in the past, consulted with in-house

attorneys on issues relating to FCRA. Plaintiff denies the remaining assertions in DCSF ¶ 18 because defendants have failed to lay an adequate foundation for the statements purportedly supporting DCSF ¶ 18.

11. For the reasons set forth below, plaintiff denies the assertions in DCSF ¶ 20. Plaintiff further denies these assertions because they are legal conclusions that are contradicted by the clear language of FCRA, the FTC's interpretations, case law, and FCRA's legislative history.

In addition to the facts stated above, plaintiff provides the following additional material facts that are relevant to this dispute:

12. Government Employees Insurance Company ("Government Employees") is the only defendant in this case with any employees, and all of the underwriting and rating for insurance policies sold by Government Employees, GEICO General, GEICO Indemnity, and GEICO Casualty, is performed by Government Employees (collectively, the defendants will be referred to as "GEICO"). March 17, 2003, Deposition of Paul Lavrey ("Lavrey March 2003 Depo."), Affidavit of Mark Friel in Support of Opposition of Defendants' Motion for Summary Judgment ("Friel Aff."), Ex. 1, at 10:5-20; 12:10-12; 14:6-15:11. These employees establish GEICO's policies and procedures with respect to underwriting and FCRA compliance, make state insurance rate filings on behalf of all GEICO companies, and take all action with respect to insureds and prospective insureds. Lavrey March 2003 Depo. at 10:5-20; 12:4-12; 26:2-27:12; 33:9-15; 149:5-12; Friel Aff., Ex. 1.

13. To make the underwriting and rating decisions, GEICO uses a so-called Computer-Assisted Underwriting system ("CAU"), a so-called "rating system," and insurance scores provided to GEICO by the credit agency Trans Union Corporation ("Trans Union"). Lavrey March 2003 Depo. at 17:4-9; 18:2-19; 34:2-14; 42:1-20; 47:1-8; 135:13-21; Friel Aff., Exs. 1 and 2.

14. When a prospective insured applies for insurance with GEICO, he or she begins by talking with one of GEICO's sales counselors, located in one of GEICO's sales and service centers, or regional offices. Lavrey March 2003 Depo. at 144:2-13; Friel Aff., Ex. 1. The sales counselor then informs the applicant that GEICO uses credit information to quote insurance. Lavrey March 2003 Depo. at 144:20-145:3; Friel Aff., Ex. 1. If the applicant consents to GEICO' s accessing his or her credit information, the sales counselor proceeds to access the applicant's consumer information and insurance score (provided by Trans Union) through GEICO's CAU. Lavrey March 2003 Depo. at 145:4-6; Friel Aff., Ex. 1. After the insurance score is obtained, the CAU processes all of the applicant's characteristics (including credit, as reflected in the insurance score) and determines in which GEICO company, and in which tier within that company, the applicant will be placed. Lavrey March 2003 Depo. at 19:1-4; 19:20-21:15; 47:1-5; Friel Aff., Exs. 1 and 3, at 1-2, 8-9.

15. During the placement process, an applicant is first considered for Government Employees and GEICO General. If he or she is not considered qualified for those companies, the applicant is next considered for GEICO Indemnity. If GEICO Indemnity is not considered appropriate, GEICO attempts to place the applicant with GEICO Casualty. Lavrey March 2003 Depo. at 54:20-55:7; Friel Aff., Ex. 1.

16. GEICO Casualty, which sells "non-standard" policies, is reserved for the "riskiest" insureds; GEICO General and Government Employees, which sell "preferred" policies, for the least "risky" insureds; and GEICO Indemnity, which sells "standard" policies, for those that fall somewhere in the middle. Lavrey March 2003 Depo. at 24:1-25:20; Friel Aff., Ex. 1.

17. With respect to GEICO Indemnity and GEICO General, the rates, classification factors, discounts, surcharges, and the amount of available coverage, are all more favorable in GEICO General (a preferred insurer) than

in GEICO Indemnity (a standard insurer). April 29, 2003 Deposition of Paul Lavrey ("Lavrey April 2003 Depo."), Friel Aff., Ex. 4, at 5:4-22:18; 54:11-20.

18. At the time Edo applied for insurance, the placement of the applicant would be compared with the placement of a hypothetical applicant whose consumer credit information was given an average weight. RCSF ¶ 8. In other words, the applicant's actual credit weight (which is based on the applicant's insurance score) was replaced with a "neutral" credit weight (which corresponds to an "average loss ratio relativity") and then the placement was re-calculated. These calculations were accomplished by GEICO's CAU-system. Lavrey March 2003 Depo. at 94: 1-4; 104:5-105:1; Friel Aff., Ex. 1.

19. Based on the results of the comparison between the two calculations, an "impact indicator" would be assigned: "U" meant the actual placement was higher than that of the hypothetical, "neutral-weighted" applicant; "N" meant the placement was the same; and "D" meant the applicant's placement was lower. Lavrey March 2003 Depo. at 93:13-95:1; Friel Aff., Ex. 1. If the actual applicant was placed no lower (or was placed higher) than the hypothetical, "neutral-weighted" applicant (and received an impact indicator of "N" or "U"), it was GEICO's policy *not* to send an adverse action notice. Lavrey March 2003 Depo. at 93:13-95:1; Friel Aff., Ex. 1. If the CAU system determined that an adverse action notice should be sent according to this procedure, it communicated that information to GEICO's electronic output system, which then determined what notice would be sent. Lavrey March 2003 Depo. at 124:20-125:21; Friel Aff., Ex. 1.

20. In Edo's case, after processing his application information (which included an insurance score generated by Trans Union) through the CAU, GEICO placed him in GEICO Indemnity. DCSF ¶ 2; Lavrey March 2003 Depo. at 34:2-14; Friel Aff., Ex. 1. If Edo's insurance score had been higher, he would have qualified for placement in GEICO

General, a more favorable placement in terms of rate, discounts, surcharges, and coverage. Lavrey March 2003 Depo. at 95:4-19; 117:11-14; 133:16-19; Lavrey April 2003 Depo. at 5:4-22:18; 54:11-20; Friel Aff., Exs. 1, 4, and 5, at Ex. A; Defendants' Supplemental Response to Plaintiffs' Interrogatory No. 6, Friel Aff. Ex. 7, at 2. Defendants did not give Edo notice of the adverse action. Defendants' Answer to Plaintiffs' Second Amended Requests for Admissions Nos. 17, 18, and 9 to Defendants, Friel Aff., Ex. 8, at 2.

21. Government Employees' director of underwriting research, Paul Lavrey, testified that: (1) GEICO's underwriting and rating system allows consumers to "benefit" from good credit by receiving a more favorable company and tier placement; (2) "GEICO has always considered it an adverse action to place someone in a higher rated company or a higher rated tier," and (3) all applicants "receive written disclosure if an adverse decision is made based upon a credit report," including "rejection, refusal to quote and higher rates." Lavrey March 2003 Depo. at 112:12-20; 115:8-116:3;142:7-10; 152:16-153:1; Friel Aff., Ex. 1.

22. In 1993 and 1994, Congress articulated its intent that the definition of "adverse action" in 15 U.S.C. § 1681a(k) must be interpreted broadly to include all actions that are adverse to the interests of the consumer. S. Rep. No. 103-209, at 4, 8 (1993), Friel Aff., Ex. 13; H.R. Rep. No. 103-486, at 26 (1994), Friel Aff., Ex. 14. In the amendments that ultimately became law in 1997, the phrase "actions included" indicates 15 U.S.C. § 1681a(k)'s definitions are illustrative only. 15 U.S.C. § 1681a(k)(1)(B)(i).

23. In July 1997, the Federal Trade Commission ("FTC") issued a prescribed notice informing users of consumer reports that all actions affecting consumers that have a negative impact are "adverse actions." 16 C.F.R. Pt. 601, App. C, Friel Aff., Ex. 9. In October 1998, the FTC issued an interpretive guideline for insurers that made it clear that the definition of "adverse action" was broad, and

could be interpreted to cover actions taken with respect to consumers with which there had been no previous contractual relationship. "Consumer Reports: What Insurers Need to Know," October 1998, Friel Aff., Ex. 10. In March 2000, the FTC released a staff opinion letter making it clear that the term "adverse action" was to be interpreted very broadly, and that the kinds of actions taken by defendant would fall within that term's definition. FCRA Staff Opinion: Stires-Ball (March 1, 2000), Friel Aff., Ex. 11.

24. In 1999, the Southern District for the District of Ohio concluded that the term "adverse action" included accepting applicants for new business on terms less favorable than those offered to other potential or existing customers. Mick v. Level Propane Gases, Inc., No. 98-CV-959, 1999 WL 33453772 (S.D. Ohio, Sept. 29, 1999), Friel Aff., Ex. 12.

25. Beginning in April 1999, and continuing through December 2002, GEICO began to follow a procedure whereby notice of adverse action would be given to new applicants only if the applicant's placement was lower than that of a hypothetical applicant who was assigned an average credit weight. Lavrey March 2003 Depo. at 74:6-14; 77:9-78:1; Friel Aff., Exs. 1 and 24. One of the stated purposes of implementing this policy was to "curb postal expenses." Lavrey March 2003 Depo. at 74:6-75:21; Friel Aff. Exs. 1 and 24.

26. In 1999 and again in 2002, defendants confirmed with the Oregon Department of Consumer and Business Services ("ODCBS") that applicants are given adverse action notices when they ask for a quote and are charged a higher rate because of information in their credit reports. Lavrey March 2003 Depo at 19:20-21:2; 150:20-151:5; Friel Aff., Exs. 1, 3 at 7, and 6 at 3. In an August 1999 filing with the ODBCS [sic], GEICO indicated that an applicant's "good credit" results in "more favorable" treatment. Lavrey March 2003 Depo. at 19:20-21:2; Friel Aff. Exs. 1 and 3.

27. GEICO's interpretation of FCRA at the time Edo was placed in GEICO Indemnity was unreasonable, unrealistic, and radical. Expert Report of Birny Birnbaum, Affidavit of Birny Birnbaum, Ex. 1, at 16-17 (attached to Friel Aff. as Ex. 25).

DATED this 31st day of October, 2003.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By /s/ Mark A. Friel
N. ROBERT STOLL, OSB No. 69165
STEVE D. LARSON, OSB No. 86354
MARK A. FRIEL, OSB No. 00259
Telephone: (503) 227-1600

And

CHARLES A. RINGO, OSB No. 89346
Attorneys for Plaintiff

* * *

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Exhibit 1 to Affidavit of Mark Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment

The confidential deposition of PAUL W. LAVREY was held on Monday, March 17, 2003, commencing at 10:30 A.M., at the Embassy Suites, 4300 Military Road, N.W., Washington, D.C. 20014 before Louisa B. McIntire- Brooks, Notary Public.

REPORTED BY: Louisa B. McIntire-Brooks, RPR, CSR

[1]

APPEARANCES:

STEVE D. LARSON, ESQUIRE
On behalf of Plaintiffs

MELONEY C. PERRY, ESQUIRE
JONATHAN L. SHAFNER, ESQUIRE
THOMAS A. GORDON, ESQUIRE
On behalf of Defendants

[2]

STIPULATION

It is stipulated and agreed that the filing of this deposition with the Clerk of Court be and the same is hereby waived.

Whereupon,

PROCEEDINGS

MS. PERRY: Mr. Larson, my name is Meloney Perry and I represent GEICO. You presented us with two deposition notices today: One entitled amended notice of deposition, a 30(b)6, witness Paul Lavrey, appears to be for the first GEICO case, Christina Sams and Amber Sommer

versus GEICO Corporation, and it is dated January the 30th for four categories of testimony.

You've also served us today, or handed to us today, the amended notice of deposition of 30(b)6 witness Paul Lavrey which appears to be for the second GEICO case, Christina Sams [sic] Amber Sommer, Matt Blevins, Ajene Edo and Ami Abarbanel versus GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Government Employees Insurance

* * *

[8]

have one in both the GEICO I case and in the GEICO II case, information you's [sic] elicit in one case cannot be used in the other case necessarily.

So, you have to establish separate bases in each case as if you were any other attorney representing any other plaintiff. That's our position. But, if you want to take it at the same time, that is what we do not agree to.

Whereupon,

PAUL W. LAVREY,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

MS. PERRY: Mr. Larson, if I may, just on the record before we get started, Mr. Lavrey is here today to give testimony on four categories only as the corporate rep of the four defendants in the case number CV3-02-00678 BR. The four categories are how the characteristics and attributes for plaintiffs affected their company and tier placement upon application renewal or when new policy members appeared on the

* * *

[10]

phrase that I usually use. It's the protective order for this case, Sams-2, which is the number CV3-02-00678 BR.

EXAMINATION BY MR. LARSON:

Q Good morning, Mr. Lavrey. Who do you work for?

A I work for Government Employees Insurance Company.

Q How long have you worked for them?

A About 19 years.

Q What do you do for them?

A I'm director of underwriting research.

Q What does a director of underwriting research do?

A We – my area is in charge of reviewing any – doing any sort of research on our underwriting policies and procedures, determining what underwriting characteristics we should use, looking at our – the loss experience for – that we have produced under the policies and procedures.

Q I served an amended notice of deposition on

* * *

[34]

A Yes.

Q Are ~~you familiar~~ with how Government Employees Insurance Company obtains credit information about applicants for insurance or people that are insured by Government Employees Insurance Company or one of its affiliates?

MS. PERRY: Can I have the court reporter read that back?

(The reporter read back as requested.)

A Yes.

Q Tell me how.

A We obtain an insurance score from TransUnion for new business for anybody calling for a quote in states where we use credit.

Q And one time you must have requested it for people who were already insured as well; correct?

MS. PERRY: Objection, assumes facts not in evidence.

A I don't believe so.

Q So, when did you first start using credit scores or credit history in determining tier and

* * *

[42]

Q Let me hand you what's been marked as Exhibit 23. Can you tell me what that is?

A This is the Assist On-Line Agreement, and I'm sorry, on Deposition Exhibit Number 22, that appears to still be a Portfolio Review Agreement. I'm sorry.

Q So, is the Assist On-Line Agreement, Exhibit 23, the agreement by which Government Employees Insurance Company obtains credit, information on consumers to be used in determining tier and company placement?

A At new business, yes.

Q And that agreement, Exhibit Number 23, is between Government Employees Insurance Company TransUnion Corporation and Fair Isaac and Company?

A It appears to be between TransUnion, Fair Isaac and Company and GEICO.

A And when you say GEICO, who is GEICO?

A That would be Government Employees Insurance Company.

(Lavrey Deposition Exhibit Number 24 was

* * *

[47]

A And then those insurance scores are put in your CAU system?

A The insurance score is one of many characteristics that CAU uses to determine company and tier placement.

Q And that CAU system is maintained and operated by Government Employees Insurance Company?

A That's my understanding.

MS. PERRY: Mr. Larson, before we begin back with Paul Lavrey's testimony, I forgot at the beginning to, when we were discussing the two amended notices, and the one dealing with the first GEICO case that you brought for Sams and Sommer versus GEICO Corporation, that just to put on the record, that it is our understanding, I think, it's been testified to in the first case, that GEICO Corporation

does not sell insurance. Therefore, even if we were to allow to [sic] you go forward with the deposition in the first GEICO case, there is no one designated to testify regarding one, two, three and four because GEICO does not sell insurance. So, there is no one that's going to testify

* * *

[77]

placement with credit and the placement if you neutralize credit. And if you were – if the applicant was adversely impacted, it would send an indicator to send the form.

Q Let's call that the first change. Have there been any changes since that first change in 1999?

A Were there any changes in '99? Is that what you're asking?

Q Yes. Let me get that. Does this change that's [sic] referred to in Deposition Exhibit 37 occur in 1999?

A It's my understanding, yes.

Q Have there been any changes to the system for sending notices since 1999?

A There was a change that we made recently in determining how we define who would receive an adverse action notice.

Q What was that change?

[78]

A Rather than comparing against a neutral score, we compared against our highest credit weight.

Q When was that change made?

A I believe that was December 2002.

Q What prompted that change?

A There was an NAIC publication, draft publication, that NAII commented on. Part of that publication defined

an adverse action beyond what was defined — beyond whether or not — how an adverse action was defined in the adverse — or in the Fair Credit Reporting Act. NAII noted that that language was not part of the FCRA wording and came from a staff opinion letter. We got a hold of the staff opinion letter and saw that the FTC, in that opinion letter, appeared to have a different interpretation of an adverse action than what we were using. As a result, we decided to change.

Q What does NAII stand for?

A National Association of Independent Insurers.

Q What does NAIC stand for?

A National Association of Insurance Commissioners.

Q And the National Association of Insurance

* * *

[93]

A I'm not certain what the scores were at the time in October of '99. But, I believe this [sic] as an attempt to characterize the general weights for those credit scores. It's probably accurate.

Q You're drawing a distinction again between the score and the weight. Can you explain that to me?

A We don't use an actual score as a neutral. There is a weight that would be associated with neutral. It would appear in this case that in October of '99, in Oregon, that that neutral weight also corresponded to the weight — was the same weight that we had for scores between 589 and 694.

Q So, if you could, look at Deposition Exhibit 37 again. It is the system design document, Bate stamped GEICO II 39. Did you find that?

A Yes.

Q Halfway down the page there is what is listed, an

impact indicator. Do you see that?

A Yes.

Q Can you explain to me how an impact indicator worked?

* * *

[94]

A This is the indicator that would have been set when we — when CAU compared the placement with the actual credit score with what the placement would have been with a neutral credit score. If it improved the placement, then it was noted as a U or upward. If it had a negative impact, it was noted with a D, and if it did not have an impact, it was noted as an N.

Q Was anything done with respect to people that received a U?

A As far as adverse action notice?

Q Yes.

A No.

Q Was anything done as far as an adverse action notice done [sic] with respect to people that had an N?

A No.

Q Was anything done with respect to a Fair Credit Reporting Act notice with people that had a D?

A Yes.

Q What happened to those people?

A They would have received our adverse action [95] notice.

Q Which is Deposition Exhibit 30?

A Yes.

(Lavrey Deposition Exhibit Number 51 was marked for purposes of identification.)

Q Is that your affidavit?

A Yes, it is.

Q Did you prepare it?

A I would have worked with counsel to prepare this.

Q What counsel?

A With my counsel.

Q Your personal counsel or GEICO's counsel?

A GEICO's counsel.

Q Is that the attorneys here today?

A Yes.

Q And who prepared the exhibit attached to your affidavit?

A I did.

Q How did you do that? Is this just an Excel spread sheet or something like that?

* * *

[104]

A determined at the time we first implemented credit in our underwriting. Fair Isaac would have generated the neutral rate at that time.

Q How did they do that?

A The neutral weight represents the — it's a mathematical formula. It represents a constant — constant times the natural log of the loss ratio relativity of one which is average, average loss ratio of relatively [sic] plus a constant.

Q Who came up with that mathematical formula?

A Fair Isaac.

Q Why did they come up with that?

A Why did they come up with that formula?

Q Yes.

A The purpose of the model is to try to differentiate between risks with different loss ratios that will produce different loss ratios in the future. A loss ratio relativity of one will be the average loss ratio that's produced, and if we don't have information for characteristic [sic], we want to assume it's average with respect to the loss ratio. So, that's why they would [105] have used that formula to determine the neutral.

Q Did you ask them to use that formula to determine the neutral?

A No.

Q Did anyone at GEICO do you know?

A I don't know, but they would have been the ones to, I'm sure, to come up with that, that methodology.

Q Do you know if Fair Isaac was involved in the decision of designing the system to send notices to only those people who were considered to have a downward movement?

A I don't know.

Q Who would know?

A I'm not certain who would know.

Q Jim Hitt was probably still in his position at that time; right?

A No, Jim Hitt was not in his position.

Q Who was in your position at that time?

A I believe Alicia Bowen.

Q Where is Alicia Bowen now?

* * *

[112]

A I believe it would be Marie Motowylak.

Q Do you have interchange with Marie Motowylak now?

A On occasion.

Q For this second change that is instituted in December 2002, did you have interaction with Marie Motowylak?

A No.

Q Who did you have interaction with in the programming department?

A I believe it was Nancy Higgins.

Q Could you turn to Deposition Exhibit 10 which is a letter to Michael Greenfield from D.P. Weedon? Could you turn to page nine of that exhibit? If you look at pages eight, nine and ten, they appear to be an attachment to the letter. Do you see that?

A Yes.

Q Are you familiar with this credit scoring procedure document?

A I have probably seen it before.

Q Do you know what it's about?

* * *

[115]

was my only concern.

Q Do you know who the intended audience was for the credit scoring procedure document which is attached to the D.P. Weedon letter on pages eight, nine and ten which has been marked as Deposition Exhibit 10?

A Generally our procedures will be published for the sales counselors.

Q So, Exhibit 10, the credit scoring procedure, is telling the sales counselors that it's important to enter all the information under this processing heading; correct?

A Yes.

Q Because they're saying if you don't enter all the information, and someone has a good credit score, they'll just be given a neutral score and so they may not get the best company placement or tier placement; correct?

MS. PERRY: Objection. The document speaks for itself.

A It's saying they need to enter as much information as possible in order to increase the [116] likelihood that we'll actually find the person on the database. So, that if they have good credit, they can benefit from that.

Q Looking at your affidavit again, which we have marked as Deposition Exhibit 51, I believe the chart you prepared that's attached to it for Ajene Edo, he was actually placed in GEICO Indemnity; correct?

A Correct.

Q Does GEICO Indemnity have any tiers in Oregon?

A I believe at the time they did not.

Q If you use a neutral credit weight for Mr. Edo, he would have also been placed in GEICO Indemnity; correct?

A Correct.

Q But, under the system as it's been changed in December of 2002, he would be compared with the highest credit weight now; correct?

A His placement would be compared with the highest — his placement would be with the highest credit weight, yes. [117]

Q And his placement with the highest credit weight would have been in GEICO General tier three; correct?

MS. PERRY: Object, assumes facts not in evidence.

A Could you ask the question again? I'm sorry.

(The reporter read back as requested.)

MS. PERRY: Objection, assumes facts not in evidence.

A If you compare his placement with the theoretically highest possible credit weight, his placement with the theoretically highest placement weight would be GEICO General tier three.

Q So, if your present system that changed for the second time in December 2002 had been in place on December 26th, 2,000 [sic], Mr. Edo would have been sent a FCRA adverse action notice; correct?

A Correct.

Q But, as your system was set up on December 26th of 2000, he was not sent a FCRA adverse

* * *

[142]

MS. PERRY: I'm sorry. Can you say that question again?

(The reporter read back as requested.)

MS. PERRY: You're talking about now versus then? What is your time frame?

MR. LARSON: Well, let me rephrase it then.

Q GEICO has always considered it an adverse action to place someone in a higher rated company or a higher rated tier; hasn't it?

A Yes.

Q Is the table an algorithm?

A I'm not sure I understand your question.

Q Do you know what an algorithm is?

A Generally.

Q Can you tell me what it is?

A It's generally a formula to — it's a formula basically.

Q The table that you were describing, that is not a formula; is it?

A It's just a table, no.

Q Would it be difficult to rerate someone

* * *

[152]

Q That would be a programming issue?

A I would imagine.

Q You still have the data as to what a person's score is; correct?

A Yes.

Q You still have the data as to what the credit weights were; correct?

A Yes.

Q And you could apply the highest credit weight just like you do now; correct?

A It is possible to do it manually, yes.

Q It might be possible to program it?

MS. PERRY: Objection, speculation, assumes facts not in evidence.

A I'm not certain.

Q The previous question said, do all applicants, in quotes, receive written disclosure if an adverse decision is made based upon a credit report, adverse decision includes objection, refusal to quote and higher rates, and the answer is yes. Is that accurate?

[153]

A Yes, I believe it is.

Q Looking at Deposition Exhibit 39, can you tell us what that is?

A These are some frequently asked questions.

Q Again, that's something from your internet?

A Yes.

Q Is it also for the sales counselors?

A Some of this is probably for the service counselors as well.

Q Could you look at Exhibit 40? Can you tell us what that is?

A I believe that's another version of the one we looked at earlier, the credit guidelines.

Q Then Deposition exhibit 41, can you tell us what that is?

A This is some general information on sending out the FCRA notices.

Q Is that something from the internet or something else?

A Yes, this would be from the internet.

Q Again, on the second page it says note to

* * *

[Footer illegible]
[Letterhead and handwriting omitted in printing]
Exhibit 3 to Affidavit of Mark Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment
Deposition Exhibit 10

August 3, 1999 Recorded

The Honorable Michael M. Greenfield Express Mail
Director of Consumer and Business Services
Oregon Department of Consumer and Business Services
350 Winter Street NE 440-5
Salem, Oregon 97310-0220

ATTENTION: RATES AND FORMS – ED NIEUBUURT

RE: Government Employees Insurance Company #PC-0277-99
GEICO General Insurance Company #PC-0278-99
GEICO Indemnity Insurance Company #PC-0279-99
GEICO Casualty Insurance Company #PC-0280-99
Automobile Casualty Manual
Our File Number: 99-117

Dear Ms. Vitus:

Below is the response to your request for additional information dated July 6, 1999 regarding the above mentioned filing. The questions are repeated below in bold for easy reference.

1. **Your exhibits show the changes to base rates by coverage and territory. Explain how the numbers are used to create your tiers.**

The base rates by coverage and territory shown in these exhibits are the rates charged for the tier with the 1.00 factor. For tiers with factor [sic] other than 1.00 (e.g. 0.80) these base rates are multiplied by the tier factor to obtain the appropriate rate.

2. GEICO Indemnity manual page P-18 and GEICO Casualty manual page P-16 need additional explanation of what makes the tiers different and why the base rates vary.

The characteristics listed below are used to determine tier placement. Attributes for each of the characteristics listed generally fall into three categories: favorable, neutral and unfavorable and for some there are additional categories. We look at these characteristics and their respective attributes in combination with each other. The tier factors vary because risks with more favorable characteristics produce better loss experience than the risks with less favorable characteristics.

Characteristics

1. Non-negligent accidents within the last three years
    - Number of Accidents – More accidents are considered less favorable
    - Multiple Accidents by Same Driver – Multiple accidents by the same driver are considered less favorable
    - Time since last accident – Accidents within the last 12 months are considered less favorable
2. Theft/Vandalism incidents within the last three years
    - Number of Incidents – Multiple incidents are considered unfavorable
    - Time since last incident – Incidents within the last 12 months are considered less favorable
3. Convictions within the last three years
    - Number of Convictions – More convictions are considered less favorable

- Multiple Convictions by Same Driver – Multiple convictions by the same driver are considered less favorable
- Seriousness of the Conviction – Major convictions are considered less favorable than minor convictions
- Time since last conviction – Convictions within the last 12 months are considered less favorable
- Multiple Convictions for Same Offense – Multiple convictions for the same offense are considered less favorable

4. License Suspension or Revocation (driving only) within the last three years
    - Presence of Suspension – Suspensions are unfavorable
    - Suspension Length – Longer suspensions are less favorable than brief suspensions (less than 15 days)
5. Minimum Driver Age and Usage
    - Young Principle Operators are less favorable
6. Occupation Group
    - Occupations are divided into categories: favorable, neutral and unfavorable
7. Driving Experience
    - Experience Length – Greater experience is more favorable than less experience
8. Number of Drivers and Marital Status
    - Multiple Drivers on a policy is more favorable
    - Married Risks are more favorable

9. Knowingly Driving Without Insurance

    - Knowingly driving without insurance is less favorable

10. Credit History

    - Good credit history is more favorable

11. Home Ownership

    - Home ownership is more favorable

12. Education

    - Education beyond a high school diploma is more favorable than a high school education or less

13. Number of Vehicles

    - Multi-car policies are more favorable

14. Type of Vehicle

    - GEICO does not insure certain types of vehicles (e.g. all-terrain vehicles (ATV's) are not written by GEICO)

15. Usage

    - GEICO does not insure vehicles used in certain ways (e.g., wholesale and retail delivery is not written)

* * *

CREDIT REPORT UNDERWRITING QUESTIONNAIRE

Oregon Insurance Division

1. Identify your sources and the types of underwriting information (i.e.: MVR reports, credit reports, etc.) used:

a. by agents prior to quoting. Credit Score.

b. by agents prior to taking an application and/or binding coverage. CLUE Reports.

c. by insurer prior to issuing. MVR reports.

d. at policy renewal. Sometimes MVR reports are ordered.

2. a. What criteria are used to determine if a credit report is ordered?

A credit score is ordered on all inquiries.

b. Are the use of credit reports uniformly required for all quotations and sales?

Yes and yes.

c. Do you use credit scoring for renewal underwriting? If yes, is it the same formula used for new business? Explain in detail.

No.

3. Are credit reports used to prescreen applicants (explain yes answers in detail):

a. by agents prior to quoting? No.

b. by agents prior to taking application? Yes, it is a consideration in determining which company/tier to quote.

c. by insurer prior to issuing? No.

d. to determine if additional reports will be ordered? No.

4. Do you use a credit score to evaluate credit history for an applicant? If yes,

a. Who developed the scoring formula you are using? Yes, Fair Isaac.

b. Is the result used to determine the premium, underwriting acceptance, or both? Explain. It is one of the factors reviewed to determine company placement (preferred, standard or non-standard) and tier placement within company.

c. Is the formula available to the insurance regulator? If yes, include it. If no, please explain the elements used for the scoring process. Fair Isaac has not disclosed the formula to us. They have met with and disclosed the formula to some insurance departments. We use the score that is returned by the vendor.

d. Is the formula known to any employee of your company? No.

e. Is the credit score for all applicants or quotes kept on file? Explain. Yes, we keep all of the information gathered during the quote process on all inquiries.

f. What historical time frame is considered in the scoring? We do not know because Fair Isaac has not disclosed to us the details of their model.

5. What training is provided to your sales force regarding the use of credit reports? Provide copy of training plan and agents guide materials. See attached Credit Scoring Procedure and Consumer Report FAQ List (Attachment 5).

6. Are Credit reports ever used as the sole source to make acceptability and premium decisions? If yes, please explain in detail. No.

7. a. Explain in detail the handling of a "no hit", or "limited history" response on a credit inquiry.

"No hit" is treated as neutral credit score (neither good nor bad) in the placement decision. "Limited history" is treated as a negative factor in the placement decision.

b. Explain any situations where treatment differs from the treatment offered to your best credit scores.

There are none

c. If less favorable treatment is given, explain why.

N/A.

8. a. What steps have you taken to ensure that you are in compliance with the Fair Credit Reporting Act?

When the placement of a potential insured has been negatively impacted by credit, we send a letter that complies with the Federal Credit Reporting Act.

b. Do all applicants or requesters for a quotation get written disclosure if an adverse decision, including rejection, refusal to quote, or higher rate, is made based on a credit report?

Yes.

c. Are records of all adverse decisions maintained at the insurer's office? If not, explain.

Yes.

9. If you use credit report underwriting for multiple related insurers, would your answers differ if we treated the group as a single insurer? Explain.
No.

CREDIT SCORING PROCEDURE

Overview

Credit score has a direct relationship to loss experience. Since some major competitors already use credit scoring as an underwriting factor, this enhancement will give GEICO the opportunity to maintain a competitive position.

How it Works

Introduction

Credit Scoring is a new enhancement to the CAU process of risk selecting. When the counselor completes the name and address window, (providing we have all the information – name, address and social security number) the system will order a credit report behind the scenes. If we have the name and address but not the social security number, the system will not order the credit report until the date of birth or age is entered. There are some states that we will not order others require pre-notification. The credit report will be based on the applicant's information only. It is important to remember one thing, the counselor will not know whether the credit report was good, bad, a no hit or a timed out case, since this is done behind the scenes.

Scoring

While the counselor is completing the application, the credit report is being retrieved from our vendor and the score from the credit report is factored into the CAU process. This score from the report will not be visible, the jury window will only state Company recommended and Tier (if applicable).

Processing

Introduction

In order to insure [sic] the best possible match for the credit report, accurate information must be collected.

Please review the information listed in the categories below.

Name, Address and Date of Birth

It is very important when collecting information from the applicant that we get the complete name, address, date of birth (SalesTalk only) and whenever possible the social security number.

Always use proper abbreviations and always include the Jr. or Sr. with a name (if applicable). The more information we enter into the system the better chance of an exact match on the credit report. The system is set up to compare all the information provided against the vendor's database and return the best match.

If there is no match the system will return a neutral score and will continue to evaluate the risk using all underwriting factors available. Obviously, if the applicant has a real good credit rating and we failed to enter enough information to make a match, the neutral score returned will not be as high as his/her real score and could possibly affect placement. A neutral score is not damaging but a real score is much better.

See Exhibit A for recommended entries for names and addresses.

Pre-Notification States

The following states require pre-notification:

- Colorado
- New York
- Rhode Island
- Vermont
- Wisconsin

In these states SalesTalk will include a pop-up box for the counselor to answer. A word track is being created for instructing the applicant that we would like to order a credit report and asks their permission. If the applicant refuses

the counselor must click on the credit report option and select the "Refuse" button. In KCAU it will need to be manually turned off. In KCAU, there will be a required field located on the General Information Screen that the interviewer must fill in. The counselor must enter a "N" in the field for ordering the applicant's credit report. Refusal cases will receive a neutral credit score which will not help or hurt their CAU evaluation.

No Credit Report States

There will be no credit reports ordered in the following states, and they will receive a neutral score all the time:

- California
- Connecticut
- Hawaii
- Indiana
- Michigan

The following states are being deferred for further review to determine if credit scoring is feasible. State regulations and other criteria will need further reviewing. These states will also receive a neutral score until further notice:

- Florida
- Georgia
- Maine
- New Hampshire
- Rhode Island

Refusals in Non Pre-Notification States

In states that do not require a pre-notification, there may be some customers who are aware that many insurance companies order credit reports. If that consumer requests that a credit report not be ordered the counselor will have the ability to click the Credit Report Option on the menu

bar and select the "Refuse" push-button. In SalesTalk, the "Refuse" push-button must be selected before all the required information is collected or it will order automatically. In KCAU enter "N" in the credit report field.

Fair Credit Reporting Act

Customers who are not placed in GE/GG and who subsequently buy/bind the policy will receive a copy of the Fair Credit Reporting Act notification (FRCA) in their New Business package.

This notification will list the name, address and phone number of Trans Union (our credit report vendor) for the applicant to call if there is a question regarding their actual credit report.

For applications that are quoted and not sold, a SAS run will be produced and the FCRA notification will be mailed to them.

Recalls

When a counselor recalls a pending application the credit report will not be reordered unless it was not received during the first quote. This will only happen if the original credit score came back blank, the system timed out the transmission, a line problem, or a zero score and information used by CAU has been changed on the application. In those cases the credit score will be retrieved, if available, and the case reevaluated by CAU.

The counselor can force a rescore on a recall by going to the menu bar and selecting the credit reports option. However, a rescore should only be done in rare instances.

* * *

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Exhibit 5 to Affidavit of Mark Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment
Deposition Exhibit 51

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS SUBJECT TO - A PROTECTIVE ORDER FROM THE COURT

AFFIDAVIT OF PAUL LAVREY

STATE OF MARYLAND §
§
COUNTY OF MONTGOMERY §

Before me the undersigned notary public on this day personally appeared Paul Lavrey, who upon being duly sworn by me stated under oath as follows:

1. "My name is Paul Lavrey. I am over 18 years of age, and am employed by Government Employees Insurance Company. My business address is Government Employees Insurance Company, 5260 Western Avenue, Chevy Chase, Maryland, 20815. I have never been convicted of a felony or crime involving moral turpitude, and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

2. I have been an employee of Government Employees Insurance Company for approximately 19 years. I have been the Director of Underwriting Research for the Defendants GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Government Employees Insurance Company ("GEICO") for approximately 3 years. In my capacity as Director of

Underwriting Research of GEICO I have become familiar with the operations and programs of GEICO. I have also become familiar with the business, business policies, record-keeping policies and protection of confidential and proprietary underwriting information for GEICO. I am authorized to make this Affidavit on behalf of GEICO.

3. I have read and reviewed Plaintiffs' Motion to Compel. Specifically, Plaintiffs' motion to compel documents responsive to Plaintiffs' Request for Production No. 8. Plaintiffs' Request for Production No. 8 requests GEICO to produce "The matrices used by defendants when using consumer credit reports or credit scores to underwrite or rate insurance." As I previously testified, the requested algorithm is Defendants' most confidential and proprietary trade secret. This information is essential to Defendants' business and is the product of years of development, experience and investment. This information is kept confidential, has limited distribution within Defendants' organizations, and is protected from disclosure to competitors. In fact, the only instance of this information being produced outside of the company is to state regulatory agencies, as required by, and as protected by statute. Release of these documents, if revealed to competitors, even accidentally, could destroy Defendants as viable entities.

4. It is my understanding that in lieu of producing the matrix, GEICO is producing the attached Exhibit "A," which contains the necessary information from the matrix with regard to credit. The information on the attached Exhibit "A" can be used to determine how a customer would be placed in a company and tier (if applicable) using a neutral credit (insurance) score in place of their actual credit score, or using the theoretically highest credit score in place of their actual credit score.

5. The columns represented in Exhibit "A" are defined in the following paragraphs 6 through 16.

6. retention number: The retention number is the customer identification number we use in the sales system.

7. state: The state is the rated state for the customer.

8. bound date: The bound date is the date that the policy was sold.

9. total weight including credit: The total weight including credit is the total weight of all characteristics of the customer. This includes the weight the customer received for the insurance score in addition to the weight received for all other underwriting characteristics, such as length of driving experience, accidents and convictions, etc.

10. insurance score: The insurance score is provided by Trans Union using the Fair Isaac Assist model.

11. actual credit weight, neutral credit weight, and highest credit weight: The actual credit weight, neutral credit weight and highest credit weight come from the Oregon credit weight tables shown on Exhibit "A", which details the Oregon credit weights effective 12/26/00, 3/31/02 & 4/15/02.

12. total weight with neutral credit: The total weight with credit neutralized is calculated as follows: Total weight including credit minus actual credit weight plus neutral credit weight.

13. total weight with highest credit: The total weight with highest credit score is calculated as follows: Total weight including credit minus actual weight plus highest credit weight.

14. actual placement: The actual placement is determined by looking up the total weight including credit in the cut score tables shown on Exhibit "A", which details the Oregon cut scores effective for 12/26/00, 3/31/02 & 4/15/02. This is how the actual company and tier (if

applicable) were determined by the Claims Assisted Underwriting (CAU) system.

15. placement with neutral credit weight: The placement with neutral credit weight is determined by looking up the total weight with credit neutralized in the cut score tables shown on Exhibit "A", which details the Oregon cut scores effective for 12/26/00, 3/31/02 & 4/15/02.

16. placement with highest credit: The placement with highest credit weight would be determined by looking up the total weight with highest credit weight in the cut score tables shown on Exhibit "A," which details the Oregon cut scores effective for 12/26/00, 3/31/02 & 4/15/02.

17. To use the credit weight table: Select the table that is in effect on the bound date. Find the range in which the insurance score falls. The credit weight on this row is the credit weight that the system used for this customer. The neutral weight is shown in the table. The highest credit weight is determined by selecting the row with the maximum credit weight. FURTHER AFFIANT SAYETH NOT."

/s/ Paul Lavrey
Paul Lavrey

Given under my hand and seal of office this 13th day of March, 2003.

/s/ [illegible]
Notary Public in and for the State of Maryland

My Commission Expires:

July 1, 2003

	State	Bound Date	Total Weight including Credit	Insurance Score	Actual Credit Weight	Neutral Credit Weight	Highest Credit Weight	Total Weight with Neutral Credit	Total Weight with Highest Credit	Actual Placement	Placement w/ Neutral Credit Weight	Placement w/Highest Credit Weight
Edo	OR	12/26/00	393	620	62	56	105	387	436	GI	GI	GG T3

OR Cut Scores Effective 12/26/00

Score Range	Company	Tier
513+	GG	2
419-512	GG	3
384-418	GI	

OR Credit Weights Effective 12/26/00

Description	Credit Weight	
No Hit	56	
001-529	0	
530-564	30	
565-589	42	
590-619	52	
620-644	62	
645-669	65	
670-694	65	
695-719	78	
720-744	97	
745-990	105	
No Score	56	
Line Down	56	
Timed Out	56	
Neutral	56	
Refused	56	

[This chart omits certain confidential information that remains under seal]

Exhibit 6 to Affidavit of Mark Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment

Deposition Exhibit 36

Confidential – Subject to Jt. Stip. & Prot. Order

[Bates numbers and document footer omitted in printing]

Confidential Pursuant to ORS 192.501(2)

Addendum D: Page 1

CREDIT REPORT UNDERWRITING QUESTIONNAIRE

Oregon Insurance Division

Note: Reference to "credit reports" includes credit scoring and similar tools.

1) Identify the company's sources and the types of underwriting information (i.e.: MVR reports, credit reports, etc.) used:
   a) By agents prior to quoting- **Credit score**
   b) By agents prior to taking an application and/or binding coverage- **CLUE reports, MVR reports**
   c) By insurer prior to issuing- **MVR reports**
   d) At policy renewal- **Sometimes MVR reports are ordered**

2) What criteria are used to determine if a credit report is ordered? ***If the applicant does not object to our ordering an insurance score, the score is ordered on all inquiries for new business.***
   a) Are the use of credit reports uniformly required for all quotations and sales? **Yes.** Are the results uniformly applied? **Yes.** Please explain in detail any "no" answers.
   b) Does the company use credit scoring for renewal underwriting? **No.** If yes, is the

same formula used for both new and renewal business? Please explain in detail.

3) Please explain in detail the use of credit reports to prescreen an individual applicant:
   a) By agents prior to quoting? ***Yes- credit is one of many characteristics used to determine company and/or tier placement.***
   b) By agents prior to taking application? ***Yes, credit is one of many characteristics used to determine company and/or tier placement***
   c) By insurer prior to issuing? **No**
   d) To determine if additional reports will be ordered? **No**

4) Does the company use a credit score to evaluate credit history for an applicant? **Yes.** If yes, please explain the following in detail:
   a) Who developed the scoring formula the company is using? **Fair Isaac, Inc.**
   b) Is the result used to determine premium, underwriting acceptance, or both? **It is one of the factors reviewed to determine company placement (preferred, standard, or non-standard) and tier placement within company.**
   c) Is the formula available to the insurance regulator? If yes please include the formula and a complete description. If no, please explain the elements used for the scoring process. **Fair Isaac, Inc. has not disclosed the formula to us. We use the score that is returned by the vendor.**
   d) Is the formula known to any employee of the company? **No.**
   e) Is the credit score kept on file for each applicant or quote? **Yes, we keep all of the**

information gathered during the quote process on all inquiries.

f) What is the historical period considered in the scoring? **We do not know because Fair Isaac, Inc. has not disclosed to us the details of its model.**

5) What training is provided to the company's sales force regarding the use of credit reports? Please provide copies of all training plans and agent guide materials. **See attached Credit Scoring Procedure and Consumer Report FAQ List (attachment 5).**

6) Are credit reports used as the sole criterion used to determine acceptability and premium calculation? **No**

7) Explain in detail the handling of a "no hit" or "limited history" response to a credit inquiry. In the case of a "no hit," is the agent, applicant or policyholder allowed to correct errors in names, addresses, and Social Security numbers prior to an adverse underwriting decision? ***No-hits and limited history are considered slightly unfavorable based on GEICO loss experience. Generally counselors will not know that credit was a no-hit. However, if the counselor/agent or applicant believes that a no-hit was a possibility, he or she may attempt to update the name, address, social security number, and or date of birth in an effort to receive a hit on the credit database. At that time, our underwriting decision would be re-evaluated based an the credit information. If the applicant is quoted a higher rate as a result of a credit no-hit, we would notify the applicant of the adverse action by way of the letters sent pursuant to the Federal Credit Reporting Act and Oregon Statutes 746.650. If***

the applicant determines that erroneous information was used to order the credit report, they may contact us to update the information and have their application for insurance re-evaluated.

8) What procedures has the company established to consider information received from an applicant or insured concerning inaccuracies contained in a credit report? ***If a credit score adversely affects placement, we send the letter required by the Federal Credit Reporting Act and Oregon Statutes 746.650 to the customer. This form refers them to TransUnion to obtain a copy of the report. If the customer discovers inaccuracies on the report, TransUnion explains how to correct the errors. If the customer contacts us to advise that a correction has been made, we will reorder the credit report and re-evaluate the risk based on the updated information.***

9) What steps has the company taken to ensure that both the company and the company's agents are in compliance with the Fair Credit Reporting Act and ORS 746.600 to 746.690 as amended by Senate Bill 269? **When the placement of a potential insured has been negatively impacted by credit or another type of consumer report, we send letters that comply with the Federal Fair Credit Reporting Act and ORS Chapter 746. We have reviewed our policies and procedures in light of SB 269 and we are satisfied that they comply with the Fair Credit Reporting Act, ORS 746.600-690, as amended by Senate Bill 269.**

a) Do all applicants and quote requests receive written disclosure if an adverse decision is made based upon a credit report? Adverse

decision includes rejection, refusal to quote and higher rates. **Yes.**

a) Are records of all adverse decisions maintained at the insurer's office? If not, please explain. **Yes.**

10) If the company uses credit report underwriting for multiple related insurers would the answers to the questionnaire be different if the related insurers were treated as a single insurer? Please explain. **No.**

Confidential Pursuant to ORS 192.501(2)

Attachment 5 (2002) – pg. 1

Overview

Credit, or insurance score, has a direct relationship to loss experience. Since many major competitors use insurance scoring as an underwriting factor, this enhancement will give GEICO an opportunity to maintain a competitive position.

How it Works

Introduction

Insurance Scoring is an enhancement to the process of risk selection. After the counselor completes the applicant page and collects the applicant's date of birth on the driver page, the system will begin its process to order an insurance score. The process begins with pre-notification, where the counselor must select "OK" or "Refused" to determine whether or not we will order a [sic] insurance score. If the applicant does not object to our ordering the insurance score, the score will be based on the applicant's information only. It is important to remember that the counselor will not know whether the insurance score was good, bad, a no hit or a timed out case, since this is done behind the scenes.

Third Party Quotes

If you are quoting a rate for a third party, do not order an insurance score. Select the insurance Score Option on the menu bar and select the "Refuse" push-button. This step must be done before the applicant's date of birth is entered.

Scoring

While the counselor is completing the rest of the sales questionnaire, the insurance score is being retrieved from our vendor and the insurance score is combined with other underwriting factors to determine company and tier placement. This score from the report will not be visible,

the jury window will only state Company recommended and Tier (if applicable).

Processing

Introduction

To ensure the best possible match for the insurance score, accurate information must be collected. Please review the information listed in the categories below.

Name, Address and Date of Birth

It is very important when collecting information from the applicant that we get the complete name, address, date of birth and whenever possible the social security number.

Always use proper abbreviations and always include the "Jr." or "Sr." with a name (if applicable). The more information we enter into the system the better chance of an exact match on the insurance score. The system is set up to compare all the information provided against the vendor's database and return the best match.

If there is no match, the system will return a no-hit and will continue to evaluate the risk using all underwriting factors available. Obviously, if the applicant has a really good insurance score, and we failed to enter enough information to make a match, the score returned will not be as high as his/her real score and could possibly affect placement.

* * *

Confidential
Pursuant to ORS 192.501(2)

Attachment 5.1(2002)
Page 1

Consumer Report FAQ List

Some customers who call GEICO for a quote will receive a letter stating that we have obtained their consumer report from a consumer reporting agency. These letters might cause some policyholders to call us with questions or concerns. The purpose of this memo is to provide you with sufficient information to handle these calls and provide our customers with the excellent customer service they've come to expect from GEICO Direct.

Background

When a potential customer calls us for a quote, we take them through a short questionnaire where we collect information about them, their vehicles, and other factors that might influence their premium. The combination of these factors determine what company they qualify for, if any. We then develop a correct premium for the risk, using our rating rules to assign points based on the type of the risk the caller represents.

Our ability to accurately predict an applicant's likelihood of loss is crucial to properly underwriting a risk. Research in recent years has pointed to a high correlation between an applicant's credit history and their potential for loss.

Therefore, one of the factors we may consider in underwriting is the credit history of the applicant. The GEICO Direct Sales Counselor will not actually see the consumer report. We receive an insurance score that relates a person's credit history to the likelihood of having an automobile accident. The insurance score is combined

with other underwriting factors to determine company and tier placement.

We are required to advise the customer if they have been adversely affected by information contained in a consumer report. In the case of a credit report, it has detailed information about a person's credit history and credit exposure, as well as information about their accumulated debts. Although we use this information to help us evaluate an insurance application, we do not actually see the specific items on these reports. Confidentiality is maintained this way.

Note: Do not assume that a call regarding a "consumer report" will always mean a credit report; it may be an MVR or CLUE report. In general terms, a consumer report is where we obtain information in addition to the information the customer provided. The counselor should determine the type of report by asking for the name and address of the agency in the letter.

Frequently Asked Questions (FAQs)

What is a Consumer Report? What is a Consumer Reporting Agency?

Insurance companies use information in consumer reports, including your driving record, accidents, traffic violations, as well as credit information, to determine the level of risk for customers. This information is organized and provided to insurance companies by Consumer Reporting Agencies. The consumer reporting agency that GEICO uses for credit scoring is Trans Union.

Why do you use this information to decide what my premium will be?

All insurance companies base their premiums on how likely it is that a person will have an accident. Credit history, in conjunction with other factors including driving record

(verified by Motor Vehicle Reports – another type of consumer report), driving habits, type of car, etc., are used to determine an accurate premium.

Can I get a copy of the report?

Yes. If you'd like a copy of the consumer report, call the following consumer reporting agency for a free copy within 60 days. You can either call them at 1(800) 645-1938 or write to them at the address below:

Trans Union Consumer Relations
National Disclosure Center
760 W. Sproul Road
Springfield, Pennsylvania
19064-0390

What did the Consumer Report say, specifically?

In order to maintain confidentiality we don't see the actual report. We receive a credit (or insurance) score that relates a person's credit history to the likelihood of having an automobile accident.

What do I do if the credit report is wrong?

Contact the credit agency directly and notify them of any discrepancy. Once they change it in their records, call us back and we will re-evaluate your quote over the phone.

Will you ever run my credit history again?

We currently only access your credit report when you first apply to us.

Who gave you permission to access my credit information?

Under the law we have a permissible business purpose to access an applicant's credit information. In addition, we pre-notify all of our customers of our use of credit prior to requesting a credit score.

Can you remove this inquiry from my credit report?

By law, Trans Union (our vendor) cannot remove the "footprints" we leave on the credit report.

Will this inquiry hurt my chances of getting credit?

No, this inquiry does not affect your credit worthiness. This inquiry pos ts only to credit reports from Trans Union and is specially coded to indicate that it is an "insurance inquiry." Insurance inquiries are ignored by all major credit "systems" which evaluate credit information. Insurance inquiries are also identified on hard copy credit reports, which may be evaluated by an individual reviewing your credit history.

* * *

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Exhibit 7 to Affidavit of Mark Friel in Support of Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment

DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' INTERROGATORY NO. 6

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendants, GEICO Casualty Company, GEICO General Insurance Company, GEICO Indemnity Company and Governments [sic] Employees Insurance Company (collectively, "GEICO"), responds to Plaintiffs', Christina Sams, Amber Sommers, Matt Blevins, Ajene Edo, Ami Abarbanel, Fourth Set of Interrogatories to Defendants, as follows:

DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' FOURTH SET OF INTERROGATORIES TO DEFENDANTS

INTERROGATORY NO. 6: Please explain how characteristics and attributes, including insurance scores, were used to determine tier, company placement or rates for plaintiffs.

RESPONSE:

GEICO incorporates by reference its previous General and Specific Objections, and provides the following supplemental response:

In addition, even if Ms. Sams, Mr. Blevins and Ms. Abarbanel had the theoretically highest insurance score; GEICO would not have placed them in a different company or tier. Therefore, their hypothetical premiums would have remained the same.

If Mr. Edo had the theoretically highest insurance score, GEICO would have placed him in GEICO General Insurance Company, which has lower premiums than GEICO Indemnity Company where he was placed due, in part, to his actual insurance score.

DATED this 28th day of April, 2003.

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CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT

AUTHORIZED TO BE FILED UNDER SEAL PURSUANT TO STIPULATED PROTECTIVE ORDER

Pursuant to LR 56.1, Defendants GEICO Casualty Company ("GEICO Casualty"), GEICO General Insurance Company ("GEICO General"), GEICO Indemnity Company ("GEICO Indemnity") and Government Employees Insurance Company ("Government Employees") (collectively, "GEICO" or "Defendants"), submit the following Objections and Reply to Plaintiff's Response to Defendants' Concise Statement of Material Facts in Support of Defendants' Motion for Summary Judgment ("DCSF").

DEFENDANTS' OBJECTIONS AND REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT ("RCSF")

Response to RCSF Paragraph 12: Defendants deny the statements in RCSF Paragraph 12. Defendants incorporate by reference Paragraphs 19 and 20 of their Concise Statement of Material Facts in Support of Defendants' Renewed Motion for Summary Judgment ("CSF"), previously filed with this Court.

Response to RCSF Paragraph 13: Defendants admit that they utilize a Computer-Assisted Underwriting ("CAU") system in the processing of a potential customer's company and tier placement. The CAU system obtains the potential customer's insurance score from Trans Union Corporation ("Trans Union"). Defendants deny all other parts of RCSF

Paragraph 13.

Response to RCSF Paragraph 14: While the statements in RCSF Paragraph 14 are generally correct, Defendants incorporate by reference CSF Paragraph 13. Defendants note that Plaintiff has admitted the veracity of CSF Paragraph 13. *See* RCSF Paragraph 1.

Response to RCSF Paragraph 15: Defendants deny Plaintiff's characterization as to a potential customer being "qualified." Defendants admit that the statements in RCSF Paragraph 15 are generally a description of how the system operates, however, GEICO incorporates by reference CSF Paragraph 14, previously filed with this Court. Defendants note that Plaintiff has admitted the veracity of CSF Paragraph 14. *See* RCSF Paragraph 1.

Response to RCSF Paragraph 16: Defendants deny Plaintiff's characterization of the risks underwritten by the various GEICO companies. All Defendants admit that they arc authorized to write automobile insurance policies in Oregon. GEICO Casualty focuses on writing automobile insurance polices in the non-standard market. Government Employees and GEICO General focus on writing automobile insurance policies in the preferred market. Finally, GEICO Indemnity focuses on writing automobile insurance polices in the standard market. Defendants deny any remaining allegations contained in RCSF Paragraph 16.

Response to RCSF Paragraph 17: Defendants admit that generally, more favorable rates are available in GEICO General than GEICO Indemnity, but it depends on the situation or potential customer. GEICO also admits that there may be additional or higher limits of coverage offered in GEICO General. *See* Deposition of Paul Lavrey dated 4/29/03 (hereinafter "Lavrey Depo. (April)") at 54:11-16. Plaintiff mischaracterizes testimony regarding classification. *See* Lavrey Depo. (April) at 17:8-16 and 17:21-18:1-9, where Mr. Lavrey testifies "no" to Plaintiffs question on the issue. The rates, discounts and surcharges are part of the overall rating plan. *See* Lavrey Depo. (April) at 51:9-21-52:1-16.

Defendants deny all other statements in RCSF Paragraph 17.

Response to RCSF Paragraph 18: Defendants admit the statements in RCSF Paragraph 18, except the characterizations that "the applicant would be compared with the placement of a hypothetical applicant" because the potential customer would be compared to the potential customer and not a hypothetical person. *See also* GEICO II—000012, 000039-42 and Lavrey Depo. (March) at 56:15-21-57:1; 74:6-21-75:1-4; 76:12-21-77:1-12.

Response to RCSF Paragraph 19: Defendants admit the statements in RCSF Paragraph 19 except that the potential customer's actual placement was compared to the potential customer's placement when using a neutral credit weight and not to a "hypothetical" potential customer as Plaintiff states.

Response to RCSF Paragraph 20: Defendants admit that GEICO's CAU system recommended that Edo be placed in GEICO Indemnity. As a result, GEICO Indemnity offered Edo a rate quote, which he accepted. Also, Defendants admit that if Edo had had the theoretically highest possible insurance score, he would have been eligible for placement in GEICO General; however, Edo did not have the theoretically highest possible insurance score. Defendants deny the remaining allegations contained in RCSF Paragraph 20.

Response to RCSF Paragraph 21: The referenced testimony is taken out of context and does not stand for the propositions urged by Plaintiff. Defendants admit that a potential customer can benefit in company and/or tier placement by having a high insurance score. Although Plaintiff argues on page 26 of his Memorandum in Opposition to Defendants' Renewed Motion for Summary Judgment ("Plaintiff's Memorandum") that this statement shows that Government Employees was the entity that took adverse action against Edo, the statement has nothing to do

with what Government Employees does or does not do with regard to the other corporate defendants. At the outset of the deposition, the witness explained that the name "GEICO" generally refers to all four companies. *See* Lavrey Depo. (March) at 13:3-16. Furthermore, the sentence "GEICO has always considered it an adverse action to place someone in a higher rated company or a higher rated tier" is taken out of context. As the deposition transcript shows, Edo's attorney was questioning Lavrey about the insurance rate Edo might have received had he had the highest possible credit rate, using the "current set up" or current procedure utilized by GEICO. *See* Lavrey Depo. (March) at 141:1-21; 142:1-10. In this context, Lavrey stated that if a potential customer's credit score, when compared with the theoretically highest possible credit weight resulted in placement in a higher price tier, the potential customer would have been sent an adverse action notice. It was within this context of questioning regarding the new procedure that Lavrey's statement was made. This statement is not evidence that the procedure actually in place at the time of Edo's application resulted in an adverse action to Edo. Defendants admit that a potential customer receives a FCRA notice if an adverse action has occurred. Defendants deny the remaining statements in RCSF Paragraph 21.

Response to RCSF Paragraph 22: Defendants deny the statements in RCSF Paragraph 22. Defendants deny that the referenced legislative measures, which were never enacted by Congress, contain the language paraphrased in Paragraph 22. The language of the legislative measures speaks for itself. Defendants deny that either S.Rep. No. 103-209 (1993) or H.R.Rep. No. 103-486 (1994), which report on legislative measures that were never enacted, reflect the intent of Congress with regard to the amendments enacted by Congress in 1996.

Response to RCSF Paragraph 23: Defendants admit the existence of the three referenced documents and state that

the content and actual language of those documents speaks for itself. Defendants deny that the referenced documents stand for the propositions stated. Defendants deny that any of these items rise to the level of binding statutory regulations or interpretations. Even Plaintiff has admitted that the informal guidelines and opinions of the Federal Trade Commission ("FTC") do not have the force of law. *See* Plaintiff's Memorandum, at 17.

Response to RCSF Paragraph 24: Defendants admit the existence of the opinion, *Mick v. Level Propane Gases, Inc.*, 1999 WL 33453772 (S.D. Ohio 1999) and state that the content and actual language of this opinion speaks for itself. Defendants deny that the opinion stands for the broad proposition stated or that *Mick* is relevant or persuasive authority for any issue raised in this insurance underwriting case. This Court has previously rejected the reasoning in *Mick* and declined to read participant liability into the plain language of § 1681m(a). *See Razilov, et al. v. Nationwide Mutual Ins. Co.*, 242 F. Supp 2d 977, 989 (D.Or. 2003). Furthermore, in *Mick* the court did not find that the actions of the defendant were in fact adverse actions. The discussion regarding adverse action was made with regard to whether the plaintiff had satisfied numerosity for class certification only. In a later appeal of the same case, *Mick v. Level Propane Gases, Inc.*, 183 F.Supp.2d 1014 (S.D.Oh. 2000), on appeal of the parties' motions for summary judgment, there was still no judicial determination that the defendant had undertaken an adverse action under the FCRA. For these reasons, the *Mick* case simply does not support the sweeping statement made by Plaintiff.

Response to RCSF Paragraph 25: Defendants deny the statements in RCSF Paragraph 25 because in 1999, a potential customer's actual placement was compared to the placement that the potential customer would have had if their insurance score was not utilized. It was not compared to a hypothetical potential customer. In addition, Defendants incorporate by reference DCSF Paragraph 22,

below.

Response to RCSF Paragraph 26: Defendants deny that the referenced documents and deposition testimony stand for the propositions stated. Defendants admit that in an August 3, 1999 filing with the Oregon Department of Consumer and Business Services [Friel Aff. Ex. 3], the following is stated:

> "The characteristics listed below are used to determine tier placement. Attributes for each of the characteristics listed generally fall into three categories: favorable, neutral and unfavorable and for some there are additional categories. We look at these characteristics and their respective attributes in combination with each other. The tier factors vary because risks with more favorable characteristics produce better loss experience than the risks with less favorable characteristics.
>
> Characteristics
> * * *
>
> 10. Credit History
> • Good credit history is more favorable"

Furthermore, in the August 3, 1999 filing, in response to the written question, "Do all applicants or requesters for a quotation get written disclosure if an adverse decision, including rejection, refusal to quote, or higher rate, is made based on a credit report?", GEICO answered "Yes". Defendants admit that in a 2002 document entitled "Credit Report Underwriting Questionnaire, Oregon Insurance Division" [Friel Aff Ex. 6], in response to the question "Do all applicants and quote requests receive written disclosure if an adverse decision is made based upon a credit report? Adverse decision includes rejection, refusal to quote and higher rates.", GEICO responded, "Yes".

Response to RCSF Paragraph 27: Defendants deny the statements in RCSF Paragraph 27. Defendants deny both the facts alleged in Paragraph 27 and furthermore, deny that the statement in Paragraph 27 is an accurate statement of page 16-17 of the Expert Report of Birny Birnbaum. Birnbaum did not say that GEICO's interpretation of FCRA at the time Edo was placed in GEICO Indemnity was unreasonable, unrealistic, and radical. Birnbaum made the statement "[t]his is an unreasonable, unrealistic and radical view *of insurance underwriting*" on page 16 of his report. This opinion was made within the context of what Birnbaum *thinks* GEICO's "views" are or "rationale" is regarding insurance underwriting, not the FCRA, and is not based on any evidence that GEICO in fact, held any such views.

DEFENDANTS' ADDITIONAL CONCISE STATEMENTS OF MATERIAL FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

These Concise Statement [sic] of Material Facts are in addition to CSF Paragraphs 1-20, previously filed with this Court:

21. GEICO used reasonable procedures in complying with the Fair Credit Reporting Act. In 1999, GEICO began using insurance scores in Oregon, with the aid of a credit scoring model developed by Fair Isaac Corporation, as one of the characteristics in determining company and/or tier placement. *See* Deposition of Paul Lavrey dated 3/17/03 ("hereinafter "Lavrey Depo. (March)" at 34:20-21 – 35:1-4. Initially, GEICO sent adverse action notices to any potential customer that did not receive a policy with the preferred companies – Government Employees and/or GEICO General. *See* Lavrey Depo. (March) at 67:11-19; 108:10-21-109:1-3; 121:11-21- 123:1-7. *See* Second Affidavit of Paul Lavrey in Support of Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment

(hereinafter, "Lavrey Aff. (2nd)"), previously filed with this Court, at 3.

22. In 1999, GEICO began using its Computer-Assisted Underwriting ("CAU") system to determine specifically whether a potential customer was adversely impacted by the use of the insurance score. The CAU system compared the company and tier placement that the potential customer received, with the company and tier placement that would have been received if GEICO had not ordered an insurance score for the potential customer. If the use of the actual insurance score resulted in placement in a company or tier with higher rates than the company or tier that would have resulted with the if [sic] the insurance score had not been ordered, an FCRA notice was automatically sent. *See* GEICO II-000012; 000039-42 and Lavrey Depo. (March) at 56:15-21-57:1; 74:6-21-75:1-4; 76:12-21-77:1-12. The intent of the system change in 1999 was to identify the specific persons that were supposed to receive the adverse action notices. *See* Lavrey Depo. (March) at 67:11-19; 108:10-21-109:1-3; 121:11-21-123:1-7. *See* Lavrey Aff. (2nd), previously filed with this Court, at 4.

23. In December 2002, GEICO made a change in determining how it defines who would receive an adverse action notice. *See* Lavrey Depo. (March) at 77:13-21-78:1. GEICO began comparing a potential customer's placement when using their actual insurance score with what their placement would have been when using the theoretically highest possible insurance score. *See* Lavrey Depo. (March) at 77:13-20; 87:16-21-88:1-3; 90:10-16; 118:16-20. If such comparison shows that the potential customer would have been eligible for placement in a company or tier with lower rates, then GEICO sends an adverse action notice. *See* Lavrey Depo. (March) at 91:2-6. *See* Lavrey Aff. (2nd), previously filed with this Court, at 5.

24. As a result of legislation passed in Washington State requiring this new process, GEICO made the change in December 2002 for Washington State, and in other credit

states as well. *See* Lavrey Depo. (March) at 78:2-14; 83:16-21-84:1-10. *See* Lavrey Aff. (2nd), previously filed with this Court, at 6.

25. In order to determine whether Edo should receive an adverse action notice, the CAU system compared Edo's company and tier placement when using his actual insurance score, with the placement that would have resulted if his insurance score had not been used. *See* Lavrey Aff. (2nd), previously filed with this Court, at 10.

26. Edo would have received the same company and tier placement whether or not his insurance score was utilized. *See* Exhibit "A" to Plaintiff's Exhibit 5. *See* Lavrey Aff. (2nd), previously filed with this Court, at 11.

27. For Edo, if you take the Total Weight including eredit of 393, subtract out his Actual Credit Weight of 62, add back the Neutral Credit Weight of 56, you get the Total Weight with Neutral Credit of 387. *See* Lavrey Depo. (March) at 99:10-20 and Exhibit "A" to Plaintiff's Exhibit 5. Edo's actual company and tier placement was with GEICO Indemnity. *See* Lavrey Depo. (March) at 116:4-8. Edo's hypothetical placement with Neutral Credit Weight was still GEICO Indemnity. *See* Lavrey Depo. (March) at 116:12-15. The Neutral Weight is a mathematical formula developed by Fair Isaac Corporation. *See* Lavrey Depo. (March) at 104:4-11. *See* Lavrey Aff. (2nd), previously filed with this Court, at 12.

28. Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company are affiliated insurance companies that are subsidiaries of GEICO Corporation. *See* Affidavit of Thomas M. Wells ("Wells Aff.") at ¶3.

29. While Government Employees Insurance Company is the only Defendant company that has employees (with the exception of employees in Florida), payroll expenses are allocated between Government Employees Insurance Company and the other three companies, GEICO General

Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company. *See* Wells Aff. at ¶4.

30. All four companies, Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company, each issue, deny, and renew insurance policies. In addition, all four companies, Government Employees Insurance Company, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company, each collect premiums and pay claims on their respective policies. *See* Lavrey Depo. (March) at 135:13-21 (regarding rating system is separate from CAU system). *See* Lavrey Aff. (2nd), previously filed with this Court, at 13.

DATED this 21st day of November 2003.

/s/ Meloney Cargil Perry

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